



REPUBLIC OF KENYA



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**Iruki & another v Mangaara & 3 others (Environment and Land Appeal
115 of 2021) [2024] KEELC 5561 (KLR) (24 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5561 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 115 OF 2021**

CK NZILI, J

JULY 24, 2024

BETWEEN

NAFTALY MWITI IRUKI 1ST APPELLANT

JULIUS MWONGERA NKIRITI 2ND APPELLANT

AND

KAIMBA MANGAARA 1ST RESPONDENT

THE DISTRICT LAND REGISTRAR 2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

THE HON. ATTORNEY GENERAL 4TH RESPONDENT

*(Being an appeal from the judgment of Hon. L.N Juma – SRM
delivered on 14.10.2021 in Meru CMCC No. 393 of 2015)*

JUDGMENT

1. The appellants, who were the 4th & 5th defendants at the lower court, had been sued by the 1st respondent as the plaintiff together with the 2nd – 4th respondents as the 1st, 2nd and 3rd defendants, through an amended plaint dated 26.4.2020.
2. The complaint by the 1st respondent was that being an allottee of plot number Meru Municipality Block II/697, with effect from 1.6.1999 the same was encroached upon by the 1st appellant in December 2015, only for him to discover that the 2nd appellant had fraudulently been issued with an allotment letter on 1.11.1995 by the 3rd respondent and on 9.6.1997, with a certificate of lease by the 2nd respondent.
3. The 1st respondent termed the acts of the 2nd appellant as deceitful, done out of collusion with the 2nd – 4th respondents.



4. The 1st respondent sought a declaration that the subsequent allotment of the plot to the 2nd appellant was illegal, null, and void, cancellation of the lease held by the 1st appellant, and reversal of the lease to his name. Further, the 1st respondent prayed for a permanent injunction and, in the alternative compensation at market rates of the value of the plot by the 2nd – 4th respondents.
5. The 2nd – 4th respondents opposed the suit with a statement of defense and a preliminary objection dated 29.1.2016.
6. The 2nd – 4th respondents denied the alleged allocation of plot number Meru Municipality Block II/697 to the 1st respondent and his allegations of fraud, illegality and collusion with the other parties listed as defendants to defraud him of the plot. The 2nd – 4th respondents termed the orders sought in the plaint as untenable. They termed the suit as offending Section 4 (2) of the Limitation of Actions Act and Section 3 (1) of the Public Authorities Limitations of Actions Act, hence time-barred.
7. The appellants opposed the suit with a statement of defense dated 20.6.2020. They denied the alleged fraud and deceit as per paragraphs 1 & 10 A of the amended plaint. The appellants averred that the allotment of the 2nd appellant and registration of ownership over the suit property was legally and procedurally done, including the subsequent transfer to the 2nd appellant, contrary to the allegations by the 1st respondent.
8. In reply to the defense dated 9.7.2020, the 1st respondent denied the contents of the statement of defense by the appellants terming it as frivolous and raising no triable issues.
9. At the trial, Kiamba Mangaara testified as PW 1 and relied on his witness statements dated 4.2.2015. His testimony was that he obtained an allotment letter dated 14.6.1995 for plot number Meru Municipality Block II/697. Subsequently, a lease was issued to him dated 1.9.1998 for 99 years, running from 1.6.1995. However, he said that out of sickness, he did not take vacant possession of the plot, even though he was shown the beacons.
10. PW 1 told the court that he later visited the land only to discover the 1st appellant building on it. PW 1 said that he visited the land office, conducted an official search, and established that the 2nd appellant had allegedly sold his land to the 1st appellant on 23.12.2013, yet he was the first allottee. PW 1 added that he issued a demand letter to the 4th respondent and eventually conducted a valuation report for the land. He produced the demand letter, certificate of lease, letter of allotment, rate payment receipts, and copy of white card as P. Exh. No. 1-5 respectively.
11. In cross-examination, PW 1 told the court that he complied with payment of all the monies required under the letter of allotment within the timelines that were required, though he had no receipts to that effect until he obtained a certificate of lease and later on continued paying the land rates. PW 1 confirmed that he had been out of the land since 2015. In re-examination, PW 1 said that he was the first one to be issued with a certificate of lease by the 4th respondent. Following an amendment of the plaint on 8.9.2020, the 1st respondent filed a further list of documents. The 1st respondent was, therefore, recalled to testify on 29.10.2020. he relied on a further witness statement dated 25.8.2020 and relied on a further list of documents dated 25.8.2020, namely an official search showing Julius Mwangela Nkiriti as the holder of a certificate of lease issued on 9.6.1997 for Meru Municipality Block II/697. It was marked as P. Exh No. (6). In further cross-examination, PW 1 told the court that he had not sued the National Land Commission or the County Government of Meru following advice from his lawyer's record.
12. George Njoroge, a Land Registrar at Meru Central Registry, testified as DW 1. He told the court that Meru Municipality Block II/697 had been registered in the names of two people the first name being



- the 1st appellant and the 1st respondent. DW 1 said that the allocation was done by the defunct County Council of Meru after which documentation would be forwarded to Arthi House for registration of a lease document.
13. DW 1 told the court that the Department of Land Administration Arthi house, headed by a land secretary in coordination with the National Land Commission, was the one responsible for processing allotment letters and that his role was merely to register and issue a certificate of lease once a lease document was forwarded to them from the said office and registered on first to come basis.
 14. Again, DW 1 said that once correspondence was received from the allocating authority at the Arthi house, a lease document would be prepared and upon completion, it would be forwarded to the land registrar for registration in triplicate. DW 1 said that the land registrar would sign the three documents and surrender one copy to the land registrar in Nairobi, another one to the owner and then retain one for the office records.
 15. DW 1 said that the leasee would then appear before the land registrar to sign the lease before the registration document is booked for registration and assigned a date, which is ordinarily the opening date for the white card, which would be registered first. In the instant case, DW 1 said that the 2nd document was forwarded at different times and in different years.
 16. According to his records, DW 1 told the court that the first entry made was for the 2nd appellant on 9.6.1997, who acquired a certificate of lease on 21.12.2013 and subsequently transferred the land to the 1st appellant, who obtained a certificate of lease on 23.1.2014.
 17. DW 1 said that the second registration was done in favor of the 1st respondent on 1.9.1998. Ordinarily, DW 1 said that once a lease was registered a second one could not be registered in respect of the same plot. DW 1 said that the second registration could have been out of a mistake or due to a lack of knowledge by the land registrar of the existence of another lease. He produced certified copies of the white card as D. Exh No's. (1) & (2) in the names of the 2nd appellant and the 1st respondent.
 18. In cross-examination, DW 1 said that the office of the chief land registrar carries out the registration of land. In this case, the lease to the 2nd appellant was to run with effect from 1.11.1995, yet there was a County Council of Meru letter of allotment issued on 14.6.1995 to the 1st respondent to run with effect from 1.6.1995 against his lease registered on 1.11.1998. He said that the time for the lease begins to run when a white card is opened.
 19. In this case, DW 1 said that from P. Exh No. (1) the letter of allotment for the 1st respondent came first, and if all the conditions of the letter of allotment had been met on time, then the 1st respondent ought to have been given the first lease. DW 1 said that ordinarily, it was irregular to have a double allocation. In this case, blame was laid on the allotting authority, the County Government of Meru, for sending two sets of correspondences to Nairobi for registration of leases when, unfortunately, the first-in-time was acted on a first come, first served basis.
 20. DW 1 said that there could have been other reasons why things went the way they did in this case; otherwise, the 1st respondent was entitled to the first lease.
 21. Further, DW 1 confirmed that there were two white cards opened over the same land; the 1st one was registered on 9.6.1997, in favor of the 2nd appellant. He said that he was unable to confirm if an official search had been conducted to confirm the ownership of the 2nd appellant.
 22. Moreso, DW 1 said that it was possible to detect fraudulent transactions, but in this case, the 2nd appellant's documents were not fraudulent, for he had followed due process in complying with the



letter of allotment within 30 days; otherwise, the letter of offer would stand expired in the absence of meeting the said terms and conditions.

23. DW 1 said that the first allotment need not translate into a first registration since it depends on compliance with the terms and conditions of the letter of allotment. DW 1 said that priority is generally given to documents as they come for registration as per the presentation book (PB) used for the registration of documents.
24. Additionally, DW 1 said that the office has to follow the law of registration of documents as they come or as received by the presenters. DW 1 said that by law, the first document registered as a title cannot be defeated. He also termed the second registration in this case, there was an oversight given that for all intentions and purposes, the record showed the legitimate owner of the suit land was the 2nd appellant.
25. Similarly, DW 1 said that the title that he passed to the 1st appellant was legitimate and could not be defeated by the title to the 3rd defendant. DW 1 said that the registration in the name of the 1st respondent was mistaken; otherwise, his lease was invalid and should have been referred to Nairobi for invalidation. Given that it was not referred, DW 1 said that the court has to cancel it. DW 1 said that going by D. Exh No. (3), it was clear that the 2nd appellant accepted the letter of allotment and made payment to Arthi House. He said that the first lease that landed on their desk had come from the 2nd appellant.
26. DW 2 was Julius Mwangera Nkiriti, who adopted his witness statement dated 7.1.2018 as his evidence in chief. He told the court that he obtained a letter of allotment on 24.11.1995 and accepted the terms and conditions by paying Kshs.25,350/=. He produced the letter of allotment and banker's cheque as D. Exh 3 & 4 as well as an original receipt dated 31.5.1996 which he produced as D. Exh No. (5).
27. Further, DW 2 said that after he obtained a letter dated 25.5.1995 from the commissioner of lands produced as D. Exh No. (6) he surveyed, fenced the plot and began building on it. DW 2 said that he equally obtained a lease through a lease letter from the district land registrar dated 6.5.1997, produced as D. Exh No. (7).
28. DW 2 said that he kept paying the rates until he was unable to develop when he sold the land to the 1st appellant by a sale agreement dated 12.7.2012 and produced as D. Exh No. (9), following the issuance of a certificate of clearance by the county dated 18.5.2010 produced as D. Exh No. (8). He produced the acknowledgment of payment dated 13.6.2013 as D. Exh No. (10). DW 2 denied the alleged fraud or deceit; otherwise, he was not aware of any other allocation of the plot since he stayed in Nairobi. He denied hurriedly selling the land after discovering the double allocation since no one else had fenced the land and his caretaker, Elias Mwangera, was on the land.
29. In cross-examination, DW 2 said that he was given the lease D. Exh No. (1) and signed the white card on 1.9.1998 following his allotment letter dated 1.11.1995. DW 2 confirmed that the letter of allotment for the 1st respondent was issued earlier on 1.9.1995 for T147, while his lease was for commercial 147 Meru Municipality Block II/parcel 697. DW 2 said the difference between the two letters of allotment was the letter T.
30. DW 3 was Muthamia Rubia a Director in charge of Land Administration Meru County Government. He said that according to office records, the survey of the plot was done in favor of the 2nd appellant, following acceptance of the letter of officer per D. Exh No's. (1-6), DW 3 said that following this, his office issued a letter of the survey, to facilitate the amendments of the registry index map and the processing of the lease for onward transmission to the lessee. He referred to D. Exh No. (7). DW 3 said that the plot was also regularly transferred to the 1st appellant according to their record going by a sale issued on 2.7.2014, after which the new owner would pay land rates. DW 3 said that the allotment



- letter had a PDP showing its locality as per the survey dated 12.5.1992. DW 3 produced the letter of allotment dated 24.11.1995 as D. Exh No. (11).
31. Naphtali Mwititi testified as DW 4, adopting his witness statements dated 9.3.2018 as his evidence in chief. He produced his certificate of the lease as D. Exh No. (12), rates clearance certificate as D. Exh No. (13) and photograph showing his business of motor vehicle engineering as D. Exh No. (14), where he has put up a permanent building on the plot.
 32. DW 4 said that before he bought the plot, he undertook due diligence both at the land registry and at the director of physical planning Meru County, by viewing the plot and confirming that the 2nd appellant had occupied it for long till July 2012. DW 4 said that he made the transfer on 23.12.2013 after completing payments of the consideration.
 33. The trial court is faulted for:
 - i. For allowing the 1st respondent's case.
 - ii. Disregarding the appellant's evidence, written submissions, and the law.
 - iii. Not finding the 1st appellants as a bonafide proprietor for value.
 - iv. Finding that there was already an allocation to the 1st respondent to defeat the 1st appellant's title.
 - v. Not finding that the 1st respondents had not met the terms and conditions of the allotment letter.
 - vi. Finding the 2nd appellant's title illegal and unlawful.
 - vii. Finding that an allotment letter could defeat a title issued on first registration.
 - viii. Not appreciating the facts and the legal principles applicable.
 - ix. Determining issues outside the scope of the suit.
 - x. Making a lousy judgment contrary to the law and the weight of the evidence availed.
 - xi. Taking into consideration matters that it should not have considered.
 34. The appellants relied on written submissions dated 17.5.2024 citing John Mukora Wachihi vs Minister of Lands and others (2013) eKLR, that the offer issued to the 1st respondent lapsed on 14.7.1995, following which the issuing authority gave the 2nd appellant a letter of offer on 14.11.1995, which he complied with.
 35. The appellants submitted that going by the evidence of DW 2, his lease was regular and so was the subsequent transfer, lease and title to the 1st appellant. Reliance was placed on Philma Farm Produce and Supplies & others vs AG and others (2013) eKLR and Waithera Gachuhi vs David Shikuru Mzee (2005) eKLR.
 36. On fraud and deceit, the appellants submitted that the 1st respondent was unable to prove the same on their part and the 2nd - 4th respondents. Reliance was placed on Sammy Mwangangi and others vs Commissioner of Lands & others (2018) eKLR, Nakuru Automobile House Ltd vs Lawrence Maina Mwangi & others (2021) eKLR, Aster Holdings Ltd vs County Council of Nairobi (2017) eKLR and Benja Properties Ltd vs Syedna Mohamed Burhannudin Sahmed and others (2015) eKLR.



37. The role of this court in exercising its appellate jurisdiction is to rehearse and re-appraise the record of the court below and come up with independent findings on facts and the law while giving credit to the trial court that saw and heard the witnesses testify. See *Selle vs Associated Motor Boat Co. Ltd & others* (1968) E.A 123.
38. Having reviewed the pleadings, evidence tendered, grounds of appeal written submissions and the law, the issues calling for my determination are:
- i. If the suit by the 1st respondent was statute-barred.
 - ii. If the 1st appellant proved fraud against the 2nd – 4th respondents and the appellants.
 - iii. If the 1st appellant was an innocent purchaser for value without notice.
 - iv. If the appeal has merits.
39. The claim by the 1st respondent was that he was the first allottee of Meru Municipality Block 11/697 with effect from 1.6.1995. he averred that on 1.11.1995, the 2nd appellant purported to issue a letter of allotment for the same plot, followed by a lease certificate by the 2nd respondent on 9.6.1997, who eventually transferred the plot to the 1st appellant on 23.12.2013. He termed the acts of the 2nd & 3rd respondents as amounting to double allocation and fraud
40. The 1st respondent, in support of his claim, produced a demand letter dated 23.6.2015 to the 3rd respondent on behalf of the National Land Commission the Chief Land Registrar and Meru Land Registrar. Further, the 1st respondent relied on a certificate of lease issued to him dated 1.9.1998, the head lessor being the County Council of Meru, a letter of allotment dated 14.6.1995.
41. In the said letter of allotment produced as P. Exh No. (3) the conditions were that there be an acceptance of the offer within 30 day's payment of the standard premium of Kshs.13,000/= annual rent of Kshs.2,100/= conveyancing fees, registration fees, survey fees, road drains, and approval fees, all totaling Kshs.20,870/=. The 1st respondent also relied on an official search showing that the 2nd appellant became an owner on 9.6.1997. There was a prior notice that if the letter of acceptance and payments were not made within the stipulated thirty days, the letter of offer would lapse.
42. On his part, the 1st & 2nd appellants denied the alleged fraud, deceit, or collusion with the 2nd – 4th respondents. They relied on an allotment letter to the 2nd appellant dated 24.11.1995 as D. Exh No. (3). In the said letter of allotment, the conditions were for an acceptance letter within 30 days of payment of Kshs.25,350/= (covering standard premium conveyancing fees, registration rates, stamp duty, and approval fees. DW 1 produced a receipt dated 31.5.1996 from the land department for the Kshs.25,350/=.
43. The 2nd appellant produced D. Exh No. (4) being a banker's cheque dated 26.5.1996 payable to the Commissioner of Lands. D. Exh. No. (6) a letter dated 25.6.1996 confirming acceptance of the letter of offer and notifying the director of surveys to proceed with the survey works D. Exh No. (7), forwarding the lease to the 2nd respondent for onward transmission to the 2nd appellant which certificate was in favor of the 2nd appellant and was issued on 9.6.1997, while the one to the 1st appellant was issued on 2.7.2014, following a transfer made on 23.12.2013.
44. In the amended plaint dated 24.6.2020, the 1st respondent, in paragraphs 9, 10 & 10A, pleaded that in the month of December 2015, he visited the land and found out the 1st appellant developing it and after conducting an official search on 29.4.2013, he established how the 2nd appellant acquired the plot and transferred the same to the 1st appellant on 23.12.2013, who obtained a title deed. The official



- search that the 1st respondent conducted and discovered the fraud was produced as P. Exh No. (5). It was dated 29.10.2013.
45. In Black's Law Dictionary 13th Ed. Page 803 fraud is defined as a knowing misrepresentation or knowing concealment of a material fact made to induce another to act to their detriment. In *Virjay Morjaria vs Nansigh Madhusing Darbar & another* (2000) eKLR, the court observed that fraud must be specifically pleaded on the face of the pleadings with the act alleged to be fraudulent set-out. Further, the court said that the fraudulent conduct must be distinctly alleged and distinctly proved, for fraud cannot be inferred from the facts. The standard of proving fraud is higher than in ordinary suits. In *Central Bank of Kenya Ltd vs Trust Bank Ltd & others* (1996) eKLR, the court stated that fraud and conspiracy were serious allegations whose onus of prima facie proof is much heavier on the appellant than in any ordinary civil case.
 46. The 1st respondent filed his initial plaint dated 23.12.2015. The particulars of fraud were set out in paragraph 10. By an application dated 16.10.2019, the 1st respondent applied to amend his plaint as per a draft proposed amended plaint attached as KM "1", to introduce an amendment to paragraphs 10 & 11 thereof. The application was allowed on 14.1.2020 as prayed. So, the amended plaint should have been filed by 29.1.2020.
 47. None was filed until 24.6.2020. The one filed was also utterly different from the one attached as KM "1". It introduced paragraph 10A that leveled particulars of deceit on the part of the 2nd appellant. Deceit is defined under Black's Law Dictionary 11th Edition page 510 as an act of intentionally leading someone to believe something that is not true an act designed to deceive or trick. Order 8 Rule (6) of the Civil Procedure Rules provides that once leave is granted to amend unless that party amends within the period specified or if no period is specified within 14 days, the order shall cease to have effect without prejudice to the court to extend the period.
 48. In this appeal, the amended plaint purportedly filed on 24.6.2020 was filed outside the 14 days. It was filed without leave. It also sought to bring a new cause of action against the 2nd appellant based on fraud, alleged to have occurred in 2013. The cause of action was introduced outside the three years from the date of discovery of the alleged fraud or illegality as per Sections 4 (4) & 26 of the [Limitation of Actions Act](#).
 49. The amendment, as introduced, was prejudicial to the 2nd appellant. It caused an injustice to him. See *CBK Ltd vs Trust Bank & 5 others* (2000) eKLR. It was seeking to introduce a new cause of action that was time-barred. In *Fredrick M. Waweru & another vs Peter Ngure Kimingi* (2007) eKLR, the court declined to allow such an amendment for what the appellant was seeking went beyond a simple amendment of the plaint where a defense of limitation was available to him.
 50. The 1st respondent had pleaded that he caused an official search on 29.4.2013 when he discovered the transfer of the land to the 1st appellant by the 2nd appellant. So, the three years began to run from the said date. Any cause of action based on fraud, whether deceit or not, introduced outside the three years and in particular on 24.6.2022, was denying the appellant herein an accrued benefit or right not to be vexed with a stale cause of action. See *Weldon vs Neal* (1887) 19 QBD 394. The amendment was also inconsistent with what had been allowed in the application for amendment. See *St Patrick Hill School Ltd vs. Bank of Africa (K) Ltd* (2018) eKLR.
 51. As to whether the 1st appellant proved fraud or illegality on the part of the appellants and the 2nd - 4th respondents, again, fraud must be proved with cogent and tangible evidence. The particulars of fraud in the original plaint were double allocation on the part of the 2nd & 3rd respondents acting in cohorts



- with the 2nd appellant in acquiring and registering the title, issuing the certificate, transferring the lease to the 1st appellant, that while aware, the 1st respondent the owner was alive and to defeat his interest.
52. The evidence tendered by the appellants and the 2nd -4th respondents and confirmed by the 1st respondent was that the allocating authority was the defunct County Council of Meru in conjunction with the Commissioner of Lands, both succeeded by the County Government of Meru and the National Land Commission. The 1st respondent blamed the 2nd -4th respondents yet they were not the allocating authority.
53. PW 1 admitted that the letter of allotment came from the Commissioner of Lands, so was that what was issued to the 2nd appellant? DW 1 narrated before the trial court the role of the 2nd -4th respondents in so far as the allocation of town plots and the issuance of letters of allotment. DW 1 said that their role was to receive a lease, register it and issue a certificate of lease upon approval by the issuing authority.
54. DW 2 testified that his role was merely to comply with the terms and conditions of the letter of allotment and appear before the land registrar to sign and collect the lease and the certificate of lease. DW 3 clarified the process of land allocation of town plots as per Section 118 of the retired Constitution and Section 9 of the Trust [Land Act](#). DW 1 told the court that he complied with all the terms and conditions of the letter of offer and eventually obtained a certificate of lease long before the 1st respondent.
55. DW 3 equally confirmed that the 2nd appellant was the bonafide owner of the suit land who had a confirmation from the County Government of Meru when he transferred the same to the 1st appellant on 23.12.2013. Therefore the 2nd appellant had complied with the law and lawfully acquired a certificate of lease. His paper trail, unlike that of the 1st respondent, showed that he accepted the letter of offer and paid for it, obtained a letter from the Commissioner of Lands directed to the Director of Surveys, and the lease was duly forwarded to the 2nd respondent, who registered it as the first in time and issued a certificate of lease. See Dr. [Joseph N.K Ngok vs Moijjo Ole Keiwua & others Civil Application No. Nai 60 of 1997](#).
56. The 1st respondent failed to join the allocating authority, namely the National Land Commission and the County Government of Meru, to suit and prove his case against them for issuing him with an allotment letter as well as a lease when there was already another accepted letter of offer and a certificate of lease.
57. DW 3 produced D. Exh No. (11) confirming that the appellants complied with the land transacting on the suit land. The 1st respondent was unable to poke holes in the procedure used by the 2nd appellant to acquire the letter of allotment and the subsequent paper trail until he obtained a certificate of title, which he eventually indicated that the register was opened on 9.6.1997, in the name of the County Council of Meru as the head lessor and the 2nd appellant a the lessee. A certificate of the lease was also issued on the same day in favor of the 2nd appellant to run from 1.11.1995.
58. Regarding D. Exh No. (1), it indicates that the copy of the register was opened on 1.9.1998 in favor of the County Council of Meru as the head lessor and the 1st respondent as the lessee and a certificate of lease issued on the same day to run with effect from 1.6.1995.
59. Asked whether he complied with the terms and conditions of the letter of allotment dated 14.6.1995 (P. Exh No. 3), PW 1 told the trial court that he paid all monies that were required of him but had no receipts before the court. Similarly, PW 1 said that even though he was shown beacons, he never took possession of the land for he became sick.



60. The 2nd – 4th respondents, in their statement of defense and preliminary objection, denied the fraud or collusion and termed the suit as offensive of Section 4 (2) of the Limitation of Action Act and Sections 3 (1) of the Public Authorities Limitation of Actions Act transferred to the 1st appellant without knowledge of any adverse claims by the 1st respondents. In the absence of the paper trail to show when the 1st respondent's acceptance letter was submitted to the allocating authority, if he paid for it and evidence of payments, my finding is that the 1st respondent was unable to prove that he was the first on-time to be allocated the plot for the invocation in his favor of the doctrine of when two equities are the same the first in time prevails. See M'Kiara M'Rinkanya & another vs Gilbert Kabere M'Mbijiwe (1982 – 1988) 1 KAR 196.
61. The 1st respondent blamed the 2nd – 4th respondents for double allocation. The allocating authorities were not sued. The National Land Commission is an independent constitutional body. It cannot be sued through the 2nd – 4th respondents. The four were not solely answerable to the acts of allocation by the defunct County Council of Meru and the Commissioner of Lands. The successors in title to those offices were not sued. Evidence of how the 2nd -4th respondents colluded and issued the two certificates of the lease, with the allocation authority was not tendered. The 2nd – 4th respondents cannot be blamed or made liable for acts committed by non-parties to the suit.
62. A court faced with two or more titles over the same land has to make an investigation so that it can discover which of the two titles should be upheld. See Hubert L. Martin & others vs. Margaret J. Kamar & others (2016) eKLR. The investigation must start with the root of the title. The 1st respondent failed to bring along all the paper trail that his letter of offer was accepted on time before the expiry of thirty days and that he paid the requisite fees to the Commissioner of Lands. There must be no gap in the paper trail since a title deed is not a result. It is part of a process.
63. In this appeal, the 2nd appellant brought all his paper trail. He also presented his papers first before the District Land Registrar. Nothing was stopping the Land Registrar from effecting the registration and issuing the title certificate to the 2nd appellant. Similarly, as in 2013, there was no encumbrance stopping the 2nd appellant from transferring the land to the 1st appellant. The allocating authority had approved the transfer. There were no red flags, which the 1st appellant ignored while acquiring the title for the case law of Dina Management Limited vs County of Mombasa & 5 others (2023) KESC 30 KLR, Torino Enterprises Limited vs AG (2023) KESC 79 (1221) to apply.
64. My finding, therefore, is that the 1st appellant was an innocent purchaser for value without notice. He did what a reasonable purchaser would have done in the circumstances as held in Dina Ltd (supra) & Torino (supra) and Fanikiwa Ltd vs Sirikwa Squatters & others (2003) KESC 58 KLR. The upshot is that the appeal is allowed with costs. The certificate of lease held by the 1st respondent is, as a result of this, recalled and canceled under Section 80 of the Land Registration Act. Costs to the appellants.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 24TH DAY OF JULY, 2024

In presence of

C.A Kananu/Mukami

Mr. Ng'entu for the appellant

Kabugi for 1st respondent

HON. C K NZILI

JUDGE

