



**Gilani & 2 others v Muriithi & 7 others; Charles Chiira Wachira & another (Interested Parties) (Environment & Land Case 180 of 2018)  
[2025] KEELC 561 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 561 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 180 OF 2018  
A OMBWAYO, J  
FEBRUARY 13, 2025**

**BETWEEN**

**ZAHIR GILANI ..... 1<sup>ST</sup> PLAINTIFF  
SHAMSHER GILANI ..... 2<sup>ND</sup> PLAINTIFF  
AVANI GILANI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**ANN NYAMBURA MURIITHI ..... 1<sup>ST</sup> DEFENDANT  
SAMUEL WACHIRA MWANGI ..... 2<sup>ND</sup> DEFENDANT  
ELIZABETH WANJIKU MAINA ..... 3<sup>RD</sup> DEFENDANT  
DAVID KARURI WACHIRA ..... 4<sup>TH</sup> DEFENDANT  
NAOMI CHEPKEMOI NGUGI ..... 5<sup>TH</sup> DEFENDANT  
ISAAC NGANGA NGUGI ..... 6<sup>TH</sup> DEFENDANT  
PATRICK KIMANI ..... 7<sup>TH</sup> DEFENDANT  
ANN WAMBUI KIMANI ..... 8<sup>TH</sup> DEFENDANT**

**AND**

**CHARLES CHIIRA WACHIRA ..... INTERESTED PARTY  
TERESIA WANJIRU CHIIRA ..... INTERESTED PARTY**



## JUDGMENT

### Introduction

1. The Plaintiffs commenced this suit vide a Further Further Amended Plaint dated 12<sup>th</sup> July, 2021 against the Defendants and interested parties seeking the following orders:
  - a. A declaration that the Plaintiffs are the rightful owners of the suit land.
  - b. An order directing the Defendants and the interested parties to vacate the suit property and demolish any development therein.
  - c. A permanent injunction against the Defendants and the interested parties restraining them from entering into, developing, interfering with or in any other manner dealing with the suit land.
  - d. An order that the Defendants and the interested parties bear the costs of this suit plus interest thereon.
  - e. An order that the Defendants and the interested parties pay the Plaintiffs mesne profits.
  - f. Any other orders that this Honourable court may deem fit.
2. The 3<sup>rd</sup> to 10<sup>th</sup> Defendants entered appearance where they denied the allegations in the plaint and urged the court to dismiss the Plaintiffs' claim. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant did not have legal representation.

### Plaintiffs' Case

3. Zahir Gilani testified as PW1 where his witness statement dated 12<sup>th</sup> July, 2021 was adopted as his evidence in chief. He testified that the 2<sup>nd</sup> Plaintiff was his brother while the 3<sup>rd</sup> Plaintiff was his wife and that he was testifying on their behalf. It was his testimony that the suit property was purchased in August, 2013. He produced the certificate of official search 25<sup>th</sup> July, 2013 Exhibit-P1, rent clearance certificate 25<sup>th</sup> July, 2013-Exhibit P2, rate clearance certificate 31<sup>st</sup> July, 2013-Exhibit P3, sale agreement dated 10<sup>th</sup> August, 2013 between Daniel Macua Ndonga and the 3<sup>rd</sup> Plaintiff-Exhibit P4, consent to transfer 15<sup>th</sup> August, 2013-Exhibit P5, stamp duty declaration, assessment and pay slip 30<sup>th</sup> August, 2013-Exhibit P6, transfer of lease form dated 14<sup>th</sup> August, 2013 from Daniel to themselves-Exhibit P7 and certificate of lease dated 15<sup>th</sup> August, 2013 in their names-Exhibit P8. He testified that the property was bought for speculation and that when they visited the property in 2016 they found squatters. He produced a search certificate dated 22<sup>nd</sup> January, 2018-Exhibit P9. It was his testimony that after the search they lodged a complaint with Nakuru police station OB NO. 53/25/11/16 after which they hired an investigation company, Robinsons Investment Limited. He testified that the company gave them a report dated 15<sup>th</sup> March, 2018-MFI P10. He further testified that after investigation, they instructed their advocate to send demand letters-Exhibit P11(a)-(f) and MFI P12
4. Upon cross examination by Njeri Njagua for the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Defendants, PW1 confirmed that the land was purchased on 10<sup>th</sup> August, 2013. He further confirmed that he had conducted an official search on 25<sup>th</sup> July, 2013 and signed an agreement 15 days later. He stated that he was not in a hurry to purchase the land. He added that upon visiting the land, he confirmed that no one was in occupation. The witness was referred to the Defendants list 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> dated 21<sup>st</sup> November, 2018 containing the photographs dated 2<sup>nd</sup> July, 2018, 3<sup>rd</sup> July, 2018, 2<sup>nd</sup> July, 2018, 2<sup>nd</sup> July, 2018, 2<sup>nd</sup>



July, 2018. He confirmed that he saw the structures in 2018 but that they were empty. He was referred to paragraph 14 of the sale agreement where he testified that there was nobody using the land. He confirmed that the property was for residential not commercial. He was further referred to paragraph 6 of the bundle where he stated that there was no reason to demolish the structures as they were to get vacant possession. He went on to state that the agreement did not provide that they were purchasing it with developments/structures. He stated that he was not aware that the structures were the Defendants home. He was referred to allotment letter and chief's letter where he stated that it was issued to the 3<sup>rd</sup> and 6<sup>th</sup> Defendant in March 2001. He admitted that he never saw the allotment letters when they purchased the property. He further admitted that the Defendants have been in occupation for over 20 years. He stated that he was not aware that the land was part of Nyamarutu squatters settlement. He stated that the vendor did not show them the original lease. PW1 was referred to certificate of lease exhibit P8 where he stated that the vendor did not give him the allotment letter and added that he used an advocate for the purchase. He stated that the search was on 25<sup>th</sup> July, 2013, bought on 10<sup>th</sup> August, 2013 and the certificate of lease issued on 15<sup>th</sup> August, 2018. He confirmed that the time frame was questionable. He added that the transfer was signed on 14<sup>th</sup> August, 2018. He admitted that he did not have a valuation report. He stated that he paid Kshs 320,040 (exhibit P6) as stamp duty. He confirmed that the transfer form (exhibit PEX7) did not show the duty payable or consideration for which he purchased the land. He admitted that the transfer form was incomplete. He also admitted that Kshs. 320,040 was paid on 30<sup>th</sup> August, 2018 after certificate of lease was issued. He stated that the said money was paid to the lawyer to forward to KRA. He stated that they paid the rent and rates and obtained the clearance certificates. PW1 admitted that he did not have the original of the rent clearance certificate. He added that it was in Daniel's name as they were only given a copy. He further stated that the rates were paid by Daniel and that the original certificate was retained at lands office.

5. PW1 stated that the search exhibit (PEX1) showed that certificate of lease was re-issued on 17<sup>th</sup> October, 2012. He stated that he was not aware that all documents in respect of the transaction were done by the same land registrar. He was referred to MFI P10 (investigation report) where he confirmed that the investigator stated that the occupant was allocated before he purchased. He added that the report stated that the land belonged to the Plaintiffs.
6. He stated that the stamp duty rate in Nakuru Municipality is 4%. He further stated that duty was paid on assessed value by the government. He also stated that he purchased land for 6,000,000/= and that land could be bought at any price. He went on to state that the land was 2.7 acres and added that there were no beacons for the sub divisions for allocations. He stated that the property was in vacant possession. He added that the Defendants were served but they refused.
7. Manuel Sakayo Markey a court process server testified as PW2. He testified that he was instructed by the firm of Mukite Musangi to serve a letter dated 21<sup>st</sup> March, 2018 upon the Defendants. He testified that he effected service and prepared an affidavit of service Exhibit P12.
8. Upon cross examination by Njeri Njagua, he confirmed that he effected service in 2018. He produced his process server license no. 00747 for the year 2018 issued on 8<sup>th</sup> March, 2018. Ref. no. 0491. He confirmed that he was familiar with procedure for service. He admitted that he did not indicate time of service despite knowing to include the same. He stated that he was shown the Defendants by the Plaintiffs employee. He admitted that the same was not captured in the affidavit. He denied that the affidavit was defective. He stated that he usually does not give all details of his travel to the place of service. He stated that he found the 3<sup>rd</sup> Defendant at her house situated on the suit parcel. He added that the 3<sup>rd</sup> Defendant made calls to the other Defendants who came. He stated that affidavits of service are not detailed. He admitted that he did not include the said details in the affidavit of service. He was referred to the 5<sup>th</sup> Defendants list of documents, document no. 1 where he confirmed that the letter had



been given to Naomi Jepkemoi Ngugi wife of Stephen Ngugi Nganga. He stated that the 3<sup>rd</sup> Defendant might have lied about the fact of her marriage to Stephen.

9. On re-examination, he stated the investigation report (MFI P10) on entry No. 6 confirmed that the land belonged to the Plaintiffs while entry no. 5 confirmed that Stephen was deceased. This marked the close of the Plaintiffs case.

### **Defendant's case**

10. Naomi Chepkemoi Ngugi the 5<sup>th</sup> Defendant testified as DW1. She testified that she was sued on behalf of Stephen Ngugi Nganga. She referred to her witness statement filed on 10<sup>th</sup> April, 2019 which was adopted as her evidence in chief. She testified that her claim was on plot no. 156 (unsurveyed) which had been allotted to Stephen Ngugi Nganga. She produced letters of administration ad litem that were issued to her and the 6<sup>th</sup> Defendant as Exhibit D1. She went on to testify that her deceased husband was allotted the land on 28<sup>th</sup> March, 2001-Exhibit D2 and that they have been living on the plot since then. She testified that they lived in Rongai until 1992 when they were chased and they came to the suit land as a group of squatters known as Nyamaruto. She testified that the squatters occupied a large parcel and that plot no. 156 was part of the large portion. She further testified that the allotment letter was given by the commissioner of lands on 28<sup>th</sup> March, 2001 in the name of Stephen Ngugi Nganga. She added that the letter was conditional on payment of an amount of Kshs 14,526 which was paid to the land's office on 29<sup>th</sup> August, 2012. She produced the receipt-Exhibit D3. She testified that she built her house on plot 156 in the year of the lord 2000. She produced a photograph showing the same as Exhibit D4. She produced a letter from the chief dated 6<sup>th</sup> June, 2018 as MFI D5.
11. Upon cross examination by Momanyi for the Plaintiff, DW1 confirmed that she took occupation of the land in 2001. She admitted that she got in before the allotment letter. She stated that her husband paid the required Kshs. 14,526/= after 11 years. She stated that she was not aware of any list.
12. Upon re-examination, she stated that the government accepted the payment of Kshs.14,526/=. She added that the present case had not been filed.
13. Robert Simiyu the Assistant Director Land Administration testified as DW2. He confirmed that the allotment letters originated from their office. He summarized the same as follows:
  - a. Unsurveyed residential plot no. 151, allocated to the 3<sup>rd</sup> Defendant on 28<sup>th</sup> March, 2001, measuring approximately 0.0450 Ha in Nakuru District. He testified that they were supposed to pay Kshs 14526/= and the same was paid via receipt dated 13<sup>th</sup> July, 2012.
  - b. Unsuryed plot no. 155 issued by the commissioner of lands to the 4<sup>th</sup> Defendant on 28<sup>th</sup> March, 2001 measuring approximately 0.0450 Ha. It was issued. He testified that the allottee paid Kshs. 14,526/= on 13<sup>th</sup> July, 2012.
  - c. Unsurveyed plot no. 156 which originated from their office was allocated to Stephen Ngugi Nganga on 28<sup>th</sup> March, 2001 measuring 0.0450 Ha. He testified that a payment of Kshs. 14,526/= was paid on 29<sup>th</sup> August, 2012.
  - d. Unsurveyed plot no. 157 for Nyamarutu squatters settlement. He testified that the allotment letter was from their office issued to the 6<sup>th</sup> Defendant and measuring 0.0450 Ha. He testified that the allottee paid Kshs. 14,526/= on 28<sup>th</sup> June, 2012.



- e. Unsurveyed plot no. 160 Nyamarutu squatters settlement. He testified that the allotment letter was issued by their office and allotted to the 7<sup>th</sup> Defendant on 28<sup>th</sup> March, 2001 measuring 0.0300 Ha. He testified that the allottee paid Kshs.14,526/= on 28<sup>th</sup> June, 2012.
  - f. Plot no. 159, the allotment letter was issued by their office and allocated to the 8<sup>th</sup> Defendant measuring 0.0300 Ha.
  - g. Plot no. 154, allotment letter dated 28<sup>th</sup> March, 2001 issued to the 9<sup>th</sup> Defendant measuring 0.0300 Ha. He testified that he paid Kshs. 14,526/= on 17<sup>th</sup> July, 2012.
  - h. Plot 171 for Nyamarutu squatters. He testified that they did the allotment letter on 28<sup>th</sup> March, 2001 and issued the same to the 10<sup>th</sup> Defendant measuring 0.0300 Ha. He testified that the allottee paid Kshs.14,526/= on 11<sup>th</sup> August, 2012.
14. He produced the original allotment letters and receipts as Exhibit D6 (a)-(h) and exhibit D7 (a)-(h) respectively. He went on to testify that prior to the issuance of the allotment letters, there was recommendation from the District Commissioner Nakuru for regularization of Nyamarutu squatter settlement. He testified that he did not have the ground report and he could not tell if they were already in occupation. He went on to testify that file no 143136 was used in the allocation and the same appears on all the allotment letters. It was his testimony the file contained a list from the DC that recommended a certain number of people for settlement. He testified that there was a list forwarded to the commissioner of lands. He added that he did not have the Defendants' names in the list. He also testified that he did not have copies of the allotment letter in the file as there were two volumes. He testified that for a recommendation for allocation to be done, there must be land and people on the ground. He went on to testify that there must be recommendation from the plot allocation committee chaired by the DC and that the existing land should be planned by the director of physical planning. DW1 testified that planning was done vide a letter 16<sup>th</sup> July, 1999. He further testified that the said letter was addressed to the provincial physical planner Nakuru requesting for the reference 143436/26 which was the file number and also quoted in the allotment letter-Exhibit D8.
15. He testified that the planner confirmed that the land was not committed and should be processed for the squatters since it would be difficult to move them elsewhere-Exhibit D9. He produced a part development plan for proposed Nyamarutu squatters scheme-Exhibit D10. He testified that the parcel that was allocated to the squatters had not been registered. It was his testimony that to get the certificate of lease, the following documents were to be availed; Letter of allotment, payment receipt and survey to be undertaken. He testified that upon completion of survey, the RIM (showing the surveyed plots) is sent to the director land administration who then processes the lease for the allottee. He testified that under the present constitution, the NLC issues the letter of allotment but processing of lease is done by director land administration. He explained that once the lease is prepared, it is forwarded to the land registry for registration which is usually forwarded by a letter addressed to the district land registrar and a copy to the owner of the property informing him/her to collect the lease from the district land registrar. He further explained that upon picking the lease, the lessee affixes his/her photos and appears before an advocate to attest the lease, then it is returned to the district land registrar who then issues a certificate of lease as proof that the lease is registered. He added that once an allotment letter was issued, the owner returned the original. He testified that in order for one to prove ownership, he/she had to avail; a letter of allotment, report, photocopy of PDP (attached to allotment letter) and lease. He testified that in the present case, survey was yet to be done.
16. It was his testimony that file no 143436 contained the list of squatters but did not have all the allotment letters. He added that the file relates to Nyamaruto squatters is in Nakuru county, previously Nakuru



District. He stated that he had the list of members and added that some allotment letters were missing probably due to misfiling.

- a. Elizabeth Wanjiku Maina, 3<sup>rd</sup> Defendant, plot no. 151 and no 151 on the list. He confirmed that the receipt was issued by them and that they had her allotment letter.
  - b. David Karuri Wachera, 4<sup>th</sup> Defendant, plot no. 155 at no. 155 on the list. He testified that the allotment letter was missing from the file and that they issued the receipt attached.
  - c. Naomi Chepkemoi Ngugi as representative of estate of Stephen Ngugi Nganga, 5<sup>th</sup> Defendant as no. 156 on the list. He testified that he did not have the duplicate letter of allotment. He added that he saw the original and confirms that it is genuine. He also confirmed that they issued the receipt.
  - d. Isaac Nganga Ngugi, 6<sup>th</sup> Defendant, appearing as no. 157 on the list. He testified that he did not have the duplicate letter of allotment on the file. He added that he saw the original allotment letter and receipt and confirmed that they were genuine.
  - e. Patrick Kimani, 7<sup>th</sup> Defendant, plot 160. He testified that he was in the list and added that he did not have his duplicate allotment letter in the file. He further testified that he was shown the original letter of attachment where he confirmed that it was genuine together with the receipt.
  - f. Jane Wambui Kimani 8<sup>th</sup> Defendant appearing on the list as no. 159. He testified that he did not have the duplicate allotment letter. He added that he saw the original and receipt attached where he confirmed that it was genuine.
  - g. Charles Chira Wachira, 9<sup>th</sup> Defendant appearing as no. 154 on the list. He testified that he did not have the duplicate allotment letter. He added that he was shown the original and receipt attached where he confirmed that there were genuine documents.
  - h. Teresia Wanjiru Chira, 10<sup>th</sup> Defendant appearing on the list as no. 171. He testified that he did not have the duplicate allotment letter. He added that he saw the original allotment letter and receipt and confirmed that they were genuine documents.
17. It was his testimony that the original is usually given to owner while the duplicate given to registry for filing. He testified that that he suspected that there was a misfiling of the missing allotment letter. DW2 explained the process of allocation of lease hold properties as follows;
- i. Starts with advertisement
  - ii. The plot allocation committee chaired by the DC convenes a meeting to prepare a list of successful applicants.
  - iii. The list of successful applicants is forwarded by the DC who is chairman of allocation committee to the commissioner of lands.
  - iv. One commissioner of lands received list, valuation is done to determine annual rent and stamp premium.
  - v. The letter of allotment re issued to successful applicants. The applicant gets the original allotment. The duplicate is retained in the mother file. The triplicate is used to open a correspondence file.
  - vi. Once the correspondence file is opened, payment is made/government fee is paid by allottee the fee is stipulated on the allotment letter.



- vii. A survey is then done to get actual acreage and survey number.
  - viii. A letter is written to director of survey to furnish us with the registry index map. It contains the survey number and actual acreage.
  - ix. Finally, a lease is processed and forwarded to district land registrar Nakuru for registration.
  - x. When land registrar receives the lease, it is signed by lesser, attested by on advocate and registered by land registrar who then issues a certificate of lease.
18. He testified that survey had not been carried out. He further testified that he could not tell the exact location but from the file, they fall within the same locality. He testified that the list of allottees originated from the district commissioner, Nakuru. He produced the list of allottees- Exhibit D11.
  19. Upon cross examination, he confirmed that the allocation to allottees was done in 2001. He confirmed that the parcel of land for allocation is identified by a person on the ground who then talks to the DC or commissioner of lands. He stated that the commissioner of lands then writes to the district physical planner, provincial planner or land officer to give status of land that is whether the land is committed or not. He further stated that once they get the confirmation that land is vacant, they write to the physical planner to prepare a PDP which is used for allocation using the list of applicants forwarded by DC. He stated that the commissioner of land in writing to the planner and land officer expects that these officers perform due diligence on ownership. He confirmed that he did not have proof that due diligence was done by planer of land officer. He also stated that the money to be paid by the allottee was to be made within 30 days failure which a notice is given to pay within 60 days failure to which the offer lapses. He confirmed that the total days was 90. He further confirmed that payments were done 11 years after issuance of the allotment letters. He stated that he could not tell if land belonged to anyone prior to allotment. He added that the only way to confirm ownership was to conduct an official search. He further stated that proof of ownership was the certificate of title or certificate of lease. He stated that land intended for allocation is always a lease hold while that of the government is free hold interest where it then leases it to the allottee. He stated that once a government issued a lease the land is taken back when the lease expires and on compulsory acquisition. He further stated that prior to 2001, the suit land had been allocated to Lucas Ruto on 25<sup>th</sup> June, 1992 where he made payment on 19<sup>th</sup> August, 1992. He stated that the concern by provincial planner that land was occupied by squatters was after Ruto had paid. He confirmed that Ruto was allocated an alternative land vide an allotment dated 15<sup>th</sup> January, 1993. He stated that the same meant that the land continued to be government land.
  20. On re-examination, DW2 stated that cancellation of allotment of land was not automatic. He stated that a party had to be notified. He further stated that there was no notice of cancellation of allotment in the file. He stated that after survey it became Nakuru Municipality Block 17/154. He stated that the said land has been allocated to the Defendants.
  21. Elizabeth Wanjiku Maina the 3<sup>rd</sup> Defendant testified as DW3 where her witness statement filed on 22<sup>nd</sup> November, 2018 was adopted as her evidence in chief. She testified that she had an allotment letter that was already produced as exhibit D6. She further testified that her plot was no. 151. She further testified that she has a permanent house with 2 black water tanks. She testified that the Plaintiff found her in occupation of the suit land.
  22. Upon cross examination, she confirmed that she was given the allotment letter in 2001. She denied that someone had the title registered in 1997. She confirmed that she was supposed to meet terms of the allotment within 30 days. She further confirmed that she paid the money after 11 years. She stated



- that the suit land belonged to the government and that she was a squatter. She admitted that she never conducted a search.
23. On re-examination, she stated that she paid Kshs.14,526/= in 2012. She added that the allotment letter was never cancelled. She also stated that the commissioner of lands did not serve her with any notice of cancellation of allotment.
  24. Isaac Nganga the 6<sup>th</sup> Defendant testified as DW4 where his statement filed on 22<sup>nd</sup> November, 2018 was adopted as his evidence in chief. He testified that his plot was no. 157 on unsurveyed plot as the allotment letter was already produced as the bundle in exhibit D6. He testified that he has constructed a house with a corrugated form sheet house that was already produced as exhibit D4. He testified that he also has a maize growing on it.
  25. Upon cross examination, he stated that he was given the allotment letter on 28<sup>th</sup> March, 2001. He further stated that he was not aware that the Plaintiffs' lease certificate was issued on 1997. He confirmed that the allotment letter gave him 30 days to pay. He stated that he paid the amount Kshs. 14,526/= on 21<sup>st</sup> August, 2012. He confirmed that the search would reveal that the suit land belonged to the Plaintiff.
  26. Upon re-examination, he stated that the commissioner of lands did not issue him with any notice of cancellation the allotment for non-payment within 30 days. He stated that he did not see the relationship between his plot and that claimed by the Plaintiffs.
  27. Patrick Kimani the 7<sup>th</sup> Defendant testified as DW5 where his statement filed on 12<sup>th</sup> October, 2020 was adopted as his evidence in chief. He denied having trespassed upon the Plaintiffs parcel. He testified that the allotment letter for plot no. 160 was produced as exhibit D6. He further testified that his plot had no relationship with the suit parcel. He added that they were allocated the land by the government.
  28. Upon cross examination, he confirmed that the plot was allocated to him on 28<sup>th</sup> March, 2001. He further confirmed that he was to pay Kshs. 14, 526/= within 30 days. He admitted that the allotment was to lapse if he did not pay within the 30 days. He denied that there was need for a notice. He stated that the government accepted his payment in 2012. He admitted that he never paid the annual rent of Kshs.1,800. He confirmed that he never conducted a search.
  29. Upon re-examination, he stated that the commissioner of lands never gave notice cancelling his allocation. He added that he was not aware of the person's name in land records as the owner of the land.
  30. David Karuri Wachira the 4<sup>th</sup> Defendant testified as DW6 where his witness statement filed on 22<sup>nd</sup> November, 2018 was adopted as his evidence in chief. He testified that he lives in Nyamarutu on plot no. 155. He denied having trespassed on the Plaintiffs land. It was his testimony that he took occupation in 1998 where there was no one the said parcel. He testified that he has built on the plot and that he lives with his family.
  31. Upon cross examination, DW6 stated that he was allocated the suit land in 2001 by the government. He admitted that he occupied the land in 1998. He admitted that he paid the Kshs 14,526/= as per the allotment letter 11 years after. He also admitted that he never paid rent of Kshs. 1,800/=. He stated that he was not aware that the search would reveal that the Plaintiff was the owner.
  32. Upon re-examination, he stated that he never received a notice from the commissioner of lands cancelling his allotment for failure to pay. He stated that he had not received any demand from the government on payment of annual rent.



33. Jane Wambi Kimani the 8<sup>th</sup> Defendant testified as DW7 where her witness statement filed on 12<sup>th</sup> October, 2020 was adopted as her evidence in chief. She testified that her plot was no. 159 as evidenced by the allotment letter that was earlier produced as exhibit D6. She testified that there was no relationship between her and that of the Plaintiff.
24. Upon cross examination, DW7 was referred to the notice of motion application dated 29<sup>th</sup> November, 2019 where she stated that she had wanted to be joined as an interested party. She testified that she had wanted to develop her plot but she was told that the land had a case and she could not join. She confirmed that she had an allotment letter and added that she was supposed to pay Kshs. 14, 526/= within 30 days.
35. Upon re-examination, he stated that he never received a notice of revocation of allocation from the commissioner of lands.
36. Charles Chira Wachira the 9<sup>th</sup> Defendant testified as DW8 where his statement filed on 13<sup>th</sup> September, 2021 was adopted as his evidence in chief. He produced his list of documents DEX 12 (a), DEX 13(a) DEX 13(b)
37. Upon cross examination, he stated that he was not aware of a certificate of lease. He added that the allotment letter was issued in 2001 and that he was to pay Kshs14,526. I paid to money after 12 years. He confirmed that he had not paid the annual rent.
38. Teresia Wanjiku Chira the 10<sup>th</sup> Defendant testified as DW9 where her statement filed on 13<sup>th</sup> September, 2021 was adopted as her evidence in chief.
39. Upon cross examination, he stated that he was not aware of a certificate of lease issued to the Plaintiff. He further stated that his allotment letter was issued in 2001 and that he was given 30 days to pay. He admitted that he paid the fees after 12 years. He also admitted that he has not been paying annual rent.
40. Upon re-examination, he stated that he was to clear the amount within 30 days. He added that no one claimed that he had not paid.

This marked the close of the Defendant's case.

### **Submissions**

41. The Plaintiff's counsel filed his submissions dated 20<sup>th</sup> January, 2025 where he gave a summary of the case and identified four issues for determination. The first issue was whether the Plaintiffs have good title to the suit land. He submits that the suit land was initially owned by Daniel Macua Ndonga as evidenced by the search. He further submits that the land was subsequently purchased by the Plaintiff as evidenced by the sale agreement dated 10<sup>th</sup> August, 2013. Counsel relied on the case of James Kendagor Simatei V Philip Kipruto Simatei [2019] eKLR and Section 3(3) of the *Law of Contract Act*. It was his submission that the suit land was later transferred to the Plaintiffs on 14<sup>th</sup> August, 2013 and registered in their names on 15<sup>th</sup> August, 2013 as evidenced in the lease transfer. He submits that the Plaintiffs claim over the suit land was proved by evidence. He cited the case in Kimani V Njeri & 3 Others (Environment & Land Case 10 of 2022) [2023] KEELC 17771 (KLR) and Section 26 (1) (b) of the *Land Registration Act*.
42. The second issue was whether due diligence was carried out by the Plaintiffs in order to establish the status and ownership of the suit land before purchase. He relied on the case of Mohamed Shahanaz Butt & Another V Kenya Revenue Authority & 2 Others [2020] eKLR and submits that the Plaintiffs conducted due diligence before purchase of the suit land as evidenced by the search and the fact that they visited the suit land. He submits that the records at lands did not indicate that there were



- parties registered as owners of the suit land. He added that the transfer documents did not indicate any encumbrances. He submits that the Plaintiffs are bona fide purchasers for value and added that DW2 during cross examination confirmed that there was no proof to show that an official search was done to ascertain whether the suit land had been allotted.
43. The third issue was whether the Defendants and the Interested parties have a claim over the suit land. He submits that the Defendants confirmed that despite having been allotted the suit property, they paid for the same after 11 years and another 12 years beyond the 90 days period provided. He further submits that had a search been conducted prior to issuance of the allotment letters in 2001, the same would have revealed that the suit land had been leased and a certificate of lease issued in 1997 to the Plaintiffs. Counsel submits that the Defendants and interested parties did not adduce any proof to support their alleged ownership of the suit land prior to purchase by the Plaintiffs. He submits that the Defendants and interested parties do not have a claim of ownership over the suit land.
  44. The fourth issue was whether the Plaintiffs are entitled to the reliefs sought in the amended plaint. While submitting in the affirmative, counsel submits that the Plaintiffs proved their case to the required standard of proof by way of documentary evidence.
  45. Counsel for the 3<sup>rd</sup> to 10<sup>th</sup> Defendants filed her submissions dated 31<sup>st</sup> January, 2025 where she identified seven issues for determination. The first issue was whether the Plaintiffs title for parcel no. Nakuru Municipality Block 17/850 was fraudulently obtained. Counsel submits in the affirmative and argues that the suit land was a leasehold title and that according to DW2, the process of acquiring the same starts with an allotment letter then a lease and thereafter a certificate of title. He submits that PW1 confirmed that he did not have the allotment letter or lease certificate. He added that the Plaintiffs failed to avail the person who sold them the land to testify how he acquired the same. He submits that the portions allocated to the Defendants and interested parties formed part of Block 17/154 which was initially owned by Lucas Ruto. He added that there were no documents for amendment and transfer from him to another person availed thus the same must have been fraudulently obtained. He submits that the Defendants were in occupation of the suit property.
  46. The second, third and fourth issues were whether the land occupied by the Defendants and interested parties is the same claimed by the Plaintiff, whether the Defendants and interested parties occupation of the land in dispute is illegal and without any color of right and whether the Plaintiffs should be declared as the rightful owners of the suit land. It was counsel's submission that the Defendants and interested parties were allocated their portions in 2001 but that they have been in occupation since early 1992. She further submits that according to DW2's evidence, the said portions were subdivisions of Block 17/154 owned by Lucas Ruto. She submits that the land claimed by the Plaintiff is different from the portions of land owned by the Defendants and interested parties. She relied on the case of Wanyoike V Karanja (Environment & Land Case 18 of 2022) [2023] KEELC 16410 (KLR) It was her submission that the Plaintiffs did not avail evidence to show that the land claimed and occupied by the Defendants and interested parties was the same as that which they were claiming. She submits that in as much as the Defendants and interested parties made late payments, the same was done before the government could re-allocate the plots to any other applicant. She cited the case of Rukaya Ali Mohammed V David Gikonyo Nambachia & Another Kisumu HCCA.9/2004 and Daudi Kiptugen V Commissioner of Lands Nairobi & 4 Others [2015] eKLR. It was her submission that the Plaintiffs did not produce sufficient material to prove validity and acquisition of the suit land.
  47. The fifth issue was whether there were notices issued to the Defendants and interested parties to vacate. She submits that the notices referred to by PW2 were with respect to the 1<sup>st</sup> and 6<sup>th</sup> Defendants only and that the same were defective since it left out major information on time of service. She relied on Section 152E of the Land Act and Sections 65 and 67 of the Land Regulations, 2017. She further relied on



the case of Kenya Assemblies of God Trustees & Another V Obuya & 5 Others (Environment & Land Case E086 of 2023) [2024] KEELC 4368 (KLR). It was her submission that there were no eviction notices served upon the Defendants and interested parties.

48. The sixth and seventh issue was whether the Plaintiff is entitled to the orders of mesne profit and whether the Plaintiff is entitled to the orders of permanent injunction and eviction. Counsel while submitting in the negative argues that the Plaintiffs failed to establish that the Defendants and interested parties trespassed onto their land.

### **Analysis and Determination**

49. I have considered the pleadings, evidence on record and submissions and I am of the view that the following issues arise for determination:
- a. Whether Nakuru Municipality Block 17/850 is the same as Nakuru Municipality Block 17/154.
  - b. Whether the Defendants and Interested parties trespassed into the Plaintiffs property.
  - c. Whether the Plaintiffs' are entitled to the prayers sought.
  - d. Who should bear the costs of the suit.

### **Whether Nakuru Municipality Block 17/850 is the same as Nakuru Municipality Block 17/154**

50. It was the Plaintiffs' case that they purchased Nakuru Municipality Block 17/850 on 19<sup>th</sup> August, 2013 from Daniel Macua Ndonga at a consideration of Kshs. 6,000,000/=. They claim that they visited the suit land in 2016 only to find the Defendants and Interested parties had trespassed their land without their consent.
51. The Defendant on the other hand claims that together with the interested parties, they were allottees of unsurveyed plot nos. 151, 155, 156, 157, 160,159, 154 and 171 Nyamarutu Settlement, Nakuru District having been allotted the same in 2001. It was the Director Land Administration (DW2) officer's case that the said plots were subdivisions of Nakuru Municipality Block 17/154 which was initially owned by Lucas Ruto.
53. It is not in dispute that from the Plaintiffs' evidence that at the time they bought the suit property, the Defendants and interested parties had already occupied the same. DW2, the Assistant Director Land Administration confirmed that prior to the issuance of the allotment letters, there was recommendation from the District Commissioner Nakuru recommending the regularization of Nyamarutu squatter settlement. DW2 further confirmed that he did not have the ground report and he therefore could not tell if the Defendants and interested parties were already in occupation. He also confirmed that survey had not been carried out and therefore, he could not tell the exact location but that from the file, they fell within the same locality. He however confirmed that after survey, the land was intended for Ruto after which it became Nakuru Municipality Block 17/154 then allocated to the Defendants.
54. I have carefully perused the letter dated 3<sup>rd</sup> August, 1999 (DEX9) from the Planning officer, Ministry of Lands and it is not in dispute that the said letter refers to the proposed scheme for Nyamaroto Squatter Settlement under PDP No. R7/98/30. In addition, the letter dated 16<sup>th</sup> July, 1999 confirmed that the said PDP affected surveyed plots Block 17/219 and 109. It is clear that no where was the Plaintiffs property Nakuru Municipality Block 17/850 mentioned. It is also not in dispute that DW2 failed to produce the mutation forms that emanated from Nakuru Municipality Block 17/154 establishing the



Defendants and interested parties' plots. It is noteworthy that from the documentary evidence and the testimony of parties, at no point was there any connection between Nakuru Municipality Block 17/850 and Nakuru Municipality Block 17/154.

55. It is trite law that parties are always bound by their pleadings and that it is the duty of the parties to adduce evidence in support of fact finding mission. In the present suit, it is quite unfortunate that the surveyor even after being summoned failed to testify. It is this court's view that the surveyor's testimony was very critical since it would have assisted the court to establish whether or not the two properties are the one and the same. In addition, the Land Registrar never testified so as to bring some form of clarity on the two properties. In view of the foregoing, this court is unable to find that the two properties are one and the same their case. It is noteworthy that it is not the court's mandate to go on a

**Whether the Defendants and Interested parties trespassed into the Plaintiffs property.**

56. It was the Plaintiffs case that they were the owners of Nakuru Municipality Block 17/850 and that the Defendants and interested parties had trespassed onto their land. It is trite law that heSection 107(1) (2) of the *Evidence Act* which states that:

who alleges must prove as provided under

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person”

Further, Sections 109 and 112 of the same Act states;

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

57. In the Court of Appeal case of Palace Investments Limited V Geoffrey Kariuki Mwenda & another [2015] eKLR, the court held as follows:

58. Denning J, in Miller V Minister of Pensions [1947] 2 All ER 372 discussing the burden of proof had this to say; -

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that a tribunal can say: we think it more probable than not; the burden is discharged, but, if the probabilities are equal it is not. This, burden on a balance or preponderance of probabilities means a win however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept where both parties...are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained.”

59. It is this court's view that in as much as the Plaintiffs were able to establish the root of their title Nakuru Municipality Block 17/850 as evidenced by the Certificate of Lease and official search, the issue of trespass was not conclusive. It is my finding that since the two properties are different and by virtue of the missing ground report, this court cannot conclusively find that there was in fact trespass onto the Plaintiffs land by the Defendants and interested parties.



**Whether the Plaintiffs are entitled to the orders sought.**

60. Considering that the Plaintiffs claim on trespass has not been successfully proved, this court has no option but to dismiss the Plaintiffs claim in its entirety. Each party to bear its own costs of the suit. It is so ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**A.O.OMBWAYO**

**JUDGE**

