



**Ojiambo & 2 others (Suing as Trustees of Mukuru Community Centre & Orphanage, a duly registered Trust) v Land Registrar, Nairobi & 2 others (Environment & Land Case E188 of 2023) [2024] KEELC 13831 (KLR) (16 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13831 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E188 OF 2023**

**JO MBOYA, J  
DECEMBER 16, 2024**

**BETWEEN**

**PETER XAVIER INDINDI OJIAMBO, JULIUS CHALE MUPIO & PHILIP MUIA  
KIMEU (SUING AS TRUSTEES OF MUKURU COMMUNITY CENTRE &  
ORPHANAGE, A DULY REGISTERED TRUST) ..... PLAINTIFF**

**AND**

**THE LAND REGISTRAR, NAIROBI ..... 1<sup>ST</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**JUSTUS MUSILI MAWATHE ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs have approached the court vide Plaint dated the 18<sup>th</sup> January 2023 and in respect of which same [Plaintiffs] have sought for the following reliefs:
  - i. Declaration that the Plaintiffs are the registered owners of Grant Number IR 131805-Plot number LR. Number 209/19552 and that the action by Ministry of Education and the Nairobi County Administration in allowing the 3<sup>rd</sup> Defendant to occupy the Plot as being unlawful, illegal and unprocedural and thus null and void ab initio.
  - ii. That an Order does issue removing the Ministry of Education, the Nairobi County Administration and the 3<sup>rd</sup> Defendant-their agents, servants and/or their employees from occupying Grant Number IR 131805-Plot number L.R. Number 209/19552.
  - iii. That the 3<sup>rd</sup> Defendant's supporters, agents, servants and/or employees be restrained from interfering with the Plaintiffs' possession and ownership of Grant Number IR 131805-Plot number L.R. Number 209/19552.



- iv. That an Order be issued stopping the Ministry of Education, the Nairobi County Administration and the 3<sup>rd</sup> Defendant-their agents, servants and/or employees from interfering with the Plaintiffs' ownership and possession Grant Number IR 131805-Plot number L.R. Number 209/19552.
  - v. Costs and interests.
2. Upon being served with the Plaint and Summons to enter appearance, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant duly entered appearance and thereafter filed a Statement of Defence. Furthermore, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants also filed a List and Bundle of documents dated the 22<sup>nd</sup> September 2024.
  3. On the other hand, the 3<sup>rd</sup> Defendant neither entered appearance nor filed any Statement of Defence.
  4. Suffice it to point out that the matter herein came up for Case Conference on the 11<sup>th</sup> July 2024, whereupon the advocates for the parties confirmed to the court that same [parties] had filed and exchanged the requisite pleadings; list and bundle of documents and witness statements. Furthermore, the parties also covenanted that the matter was ready for Hearing.
  5. Arising from the intimation by the parties [details in terms of the preceding paragraph], the court proceeded to and confirmed the matter ready for Hearing. In addition, the court ventured forward and fixed the matter for Hearing on the 14<sup>th</sup> October 2024.

Evidence By The Parties:

- a. Plaintiffs' Case:
6. The Plaintiffs' case revolves around the evidence of one, namely, Peter Xavier Indindi Ojiambo. Same testified as PW1.
  7. It was the testimony of the witness [PW1] that same is the 1<sup>st</sup> Plaintiff in respect of the instant matter. Furthermore, the witness averred that by virtue of being the 1<sup>st</sup> Plaintiff in respect of the instant matter, same [witness] is thus conversant with the facts of the case. In addition, the witness testified that same has also recorded and filed a Witness Statement.
  8. To this end, the witness sought to adopt and rely on the Witness Statement dated the 18<sup>th</sup> January 2023. Instructively, the Witness Statement under reference was thereafter adopted and constituted as the Evidence in Chief of the witness.
  9. On the other hand, the witness adverted to the List and Bundle of documents dated the 18<sup>th</sup> January 2023. In this regard, the witness sought to tender and produce the various documents highlighted at the foot of the list of documents dated the 18<sup>th</sup> January 2023. There being no objection to the production of documents under reference, same were admitted and constituted as the Plaintiffs' exhibits P1 to P4, respectively.
  10. It was the further testimony of the witness that the rest of the Plaintiffs have authorized and mandated him [PW1] to attend court and testify on their behalf. In this respect, the witness alluded to the Authority filed on behalf of the rest of the Plaintiffs.
  11. Additionally, the witness adverted to the Plaint dated the 18<sup>th</sup> January 2023. To this end, the witness implored the court to find and hold that the Plaintiffs' claim to and in respect of the suit property is meritorious.
  12. On cross examination by learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the witness [PW1] averred that same is the 1<sup>st</sup> Plaintiff herein. Besides, the witness testified that at the foot of his witness statement



- which was adopted as the evidence in chief, same [witness] has averred that the Plaintiffs are the registered owners of the suit property.
13. Whilst under further cross examination, the witness testified that even though same [witness] has testified that the Plaintiffs are the registered owners of the suit property, same has not availed or produced before the court the Certificate of Title to that effect.
  14. At any rate, it was the further testimony of the witness that the Plaintiffs don't have the Certificate of Title in respect of the suit property.
  15. Furthermore, it was the testimony of the witness that the Plaintiffs were issued with a Letter of Allotment over and in respect of the suit property. However, the witness admitted that same has not produced the Letter of Allotment before the court.
  16. It was the further testimony of the witness that even though the Letter of Allotment has not been produced by the Plaintiffs, same witness has seen a copy of the Letter of Allotment filed on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
  17. On further cross examination, the witness averred that the Letter of Allotment filed on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was issued to Mukuru Community Centre & Orphanage. In addition, the witness averred that the letter of allotment was duly accepted.
  18. Nevertheless, and whilst still under cross examination, the witness stated that the Plaintiffs were never issued with a Certificate of Lease. At any rate, it was the testimony of the witness that the certificate of lease was issued in favour of another person.
  19. It was the further testimony of the witness that the rest of the Plaintiffs and himself followed up the issue of the Certificate of Lease with the Commissioner of Lands but same [Plaintiffs] were never favoured with any response.
  20. It was the further testimony of the witness that the Certificate of Title in respect of the suit property was issued in favour of Mukuru Community Centre. Nevertheless, the witness testified that same [witness] has not sued Mukuru Community Centre.
  21. It was the witness's further testimony that the organization which is represented by the Plaintiffs, namely, Mukuru Community Centre & Orphanage was registered in terms of a Trust Deed. However, the witness admitted that the trust deed was registered much later after the letter of allotment had been issued.
  22. Whilst under further cross examination, the witness averred that he is the Chairperson of Mukuru Community Centre & Orphanage. However, the witness conceded that same has neither tendered nor produced any minutes to demonstrate his [witness] election as the chairperson.
  23. On the other hand, it was the testimony of the witness that a certificate of title was issued to Mukuru Community Centre & Orphanage. Furthermore, the witness has confirmed that same has seen various documents including a Surrender instrument relating to L.R No. 209/19552 [the suit property].
  24. Upon being referred to the documents filed on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the witness averred that same is not aware whether the suit property was surrendered.
  25. On re-examination by learned counsel for the Plaintiffs, the witness averred that it is him [witness] who signed for the Letter of Allotment. Furthermore, the witness averred that it is him who was charged with the Responsibility of procuring the letter of allotment.



26. Whilst still under re-examination, the witness averred that the land in question was not allocated to Mukuru Community Centre. On the contrary, the witness averred that the land in question was allocated to Mukuru Community Centre & Orphanage.
27. With the foregoing testimony, the Plaintiffs' case was closed.
  - b. 1<sup>st</sup> And 2<sup>nd</sup> Defendants' Case:
28. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants case revolves around the evidence of one witness, namely, George Gitonga. Same testified as DW1.
29. It was the testimony of the witness [DW1] that same is a Senior Land Registrar working in the Ministry of Lands, Public works, Housing and Urban Development. In this regard, the witness testified that by virtue of his office, same is conversant with the facts of this matter.
30. Additionally, the witness averred that same has since recorded and filed a Witness Statement. In this respect, the witness adverted to the witness statement dated the 2<sup>nd</sup> September 2024 and which witness statement the witness sought to adopt and rely on as his Evidence in Chief.
31. On the other hand, the witness adverted to the List and Bundle of Documents dated the 2<sup>nd</sup> September 2024. To this end, the witness sought to tender and produce the various documents highlighted at the foot of the said list of documents.
32. There being no objection to the production of the documents at the foot of the list under reference, same [documents] were duly tendered and admitted as exhibits D1 to D15 on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
33. On cross examination by learned counsel for the Plaintiffs, the witness averred that same [DW1] has availed before the court a copy of the Letter of Allotment in respect of the suit property. Furthermore, the witness averred that a copy of the Letter of Allotment references Mukuru Community Centre & Orphanage.
34. Whilst under further cross examination, the witness averred that the Letter of Allotment has never been withdrawn and/or rescinded. For good measure, the witness testified that same [witness] has no evidence of the cancellation of the letter of allotment.
35. It was the further testimony of the witness that same has also tendered and produced before the court a copy of Memorandum of Registration in respect of the suit property. Besides, the witness averred that the transferee[s] at the foot of the Memorandum of Transfer include Gedion Kyalo Kimuli, Philip Muia Kimeu and Julius Chale Mupio as trustees of Mukuru Community Centre.
36. It was the further testimony of the witness that the Memorandum of Transfer was duly registered. Furthermore, the witness averred that a Certificate of Title was thereafter issued in favour of the transferees.
37. On re-examination, the witness averred that same has availed and tendered before the court a copy of the letter of allotment in respect of the suit property. In addition, the witness averred that the letter of allotment contains special terms/conditions including the issuance of a letter of acceptance and payment of the stand premium.
38. Whilst under further re-examination, the witness averred that same [witness] has not seen a copy of the letter of acceptance, if any, that was issued by the Plaintiffs. In any event, the witness averred that in the absence of acceptance and payment of the stand premium, the letter of allotment would automatically lapse.



39. It was the further testimony of the witness that the letter of allotment that was issued in favour of Mukuru Community Centre and Orphanage indeed lapsed.
40. On examination by the court, the witness averred that the suit property is registered in the name of the trustees of Mukuru Community Centre. However, the witness added that Mukuru Community Centre have not been sued in respect of the instant matter.
41. It was the further testimony of the witness that the Trust Deed which is being relied upon by the Plaintiffs was registered on the 31<sup>st</sup> July 2007. However, the witness added that the Letter of Allotment adverted to was issued earlier than the date of registration of the Trust Deed.
42. It was the further testimony of the witness that it was not possible for the letter of allotment to be issued in the name of Mukuru Community Centre & Orphanage long before the registration of the Trust Deed. In this regard, the Witness contended that the Letter of allotment was thus irregular and illegal
43. With the foregoing testimony, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' case was closed.
  - c. 3<sup>rd</sup> Defendant's Case:
44. The 3<sup>rd</sup> Defendant neither entered appearance nor filed any statement of defence. Furthermore, the 3<sup>rd</sup> Defendant also did not participate in the proceedings.

#### **Parties' Submissions:**

45. At the close of the Hearing, the advocates for the parties covenanted to file and exchange written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.
46. The Plaintiffs filed written submissions dated the 18<sup>th</sup> November 2024 whereas the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed written submissions dated the 17<sup>th</sup> October 2024. For coherence, the two [2] sets of written submissions form part of the record of the court.
47. The court has taken cognizance of the written submissions filed on behalf of the respective parties. Furthermore, the court has also appreciated the issues adverted to and highlighted thereunder.

#### **Issues For Determination:**

48. Having reviewed the pleadings filed by the parties; the evidence tendered [both oral and documentary] and the written submissions filed on behalf of the parties, the following issues do crystalize [emerge] and are thus worthy of determination:
  - i. Whether the Plaintiffs have established and demonstrated that same [Plaintiffs] are the lawful owners of the suit property or otherwise.
  - ii. What reliefs if any, ought to be granted.

#### **Analysis And Determination**

##### Issue Number 1

Whether the Plaintiffs have established and demonstrated that same [Plaintiffs] are the lawful owners of the suit property or otherwise.



49. The Plaintiffs herein filed the Plaint dated the 18<sup>th</sup> January 2023 and wherein same [Plaintiffs] have contended that the Plaintiffs are the lawful and registered proprietors of L.R No. 209/19552 [I.R No. 131805] hereinafter referred to as the suit property.
50. Furthermore, the Plaintiffs contended that even though same [Plaintiffs] are the lawful and legitimate proprietors of the suit property, the Defendants herein have trespassed thereon and evicted/removed the Plaintiffs from the suit property. To this end, it has been contended that the impugned actions undertaken by the Defendants are illegal and unlawful.
51. Other than the foregoing, it was contended that by virtue of being the registered owner of the suit property, the Plaintiffs herein are entitled to quiet and peaceful enjoyment thereof. In this regard, the Plaintiffs have thus implored the court to grant the various reliefs adverted to and highlighted at the foot of the Plaint under reference.
52. Suffice it to point out that during his testimony, PW1 reiterated the averments contained in the witness statement. Furthermore, the witness ventured forward and produced the documents at the foot dated the 18<sup>th</sup> January 2023. Notably, the said documents were tendered and admitted as Plaintiffs' exhibits P1 to P4, respectively.
53. Nevertheless, it is not lost on the court that despite the claim by the Plaintiffs that same [Plaintiffs] were issued with a letter of allotment over and in respect of the suit property, the letter of allotment, if any, was neither tendered nor produced before the court.
54. Additionally, there is no gainsaying that upon being issued with a letter of allotment, the allottee thereof, the Plaintiffs not excepted, would be called upon to issue a letter of acceptance. For good measure, the letter of acceptance is to be issued within a prescribed timeline. Instructively, the timeline is capped at 30 days from the date of the letter of offer.
55. Other than the letter of acceptance, which must be issued by the allottee, it is not lost on this court that the allottee is also called upon to pay the requisite stand premium. Suffice it to underscore, that the stand premium is also payable within a circumscribed timeline.
56. Pertinently, the payment of the stand premium together with the other statutory levies, constitute a fundamental term of the letter of allotment. In this regard, where the payment of the stand premium is not made within the prescribed timeline, then the letter of allotment in question shall lapse by effluxion of time.
57. To be able to demonstrate ownership and entitlement to the suit property, it was incumbent upon the Plaintiffs to tender and produce before the court plausible and credible evidence underpinning the process towards [sic] the issuance of the Certificate of Title which was produced as exhibit P1.
58. However, there is no gainsaying that PW1 who testified for and on behalf of the rest of the Plaintiffs conceded that same did not produce before the court the letter of allotment, the letter of acceptance, the copy of banker's cheque, if any, paid to the Commissioner of Lands or the revenue receipt, if any; issued in acknowledgment by the Commissioner of Lands.



59. To this end, it is imperative to revert to the testimony of PW1 whilst under cross examination. Same [PW1] testified as hereunder whilst under cross examination by learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants:

“I do confirm that the letter of allotment was duly accepted by the Plaintiffs. I have availed a copy of the letter of acceptance. I now say that I have not filed a copy of the letter of acceptance”.

60. Whilst still under cross examination, PW1 stated thus:

“I wish to confirm that I paid the stand premium. The payment was made on the 16<sup>th</sup> January 2007. However, I have not availed a copy of the banker’s cheque. I have also not availed a copy of the revenue receipt before the court.”

61. On another not, PW1 testified and stated as hereunder:

“I do confirm that I was not issued with a certificate of lease. I wish to state that someone else procured and obtained a certificate of lease in respect of the suit property.”

62. From the foregoing testimony, a number of issues do arise. Firstly, in the absence of the letter of allotment which the Plaintiffs contend was issued to and in their favour, the court is deprived of a critical document which anchors the claim towards ownership of the suit property.

63. Secondly, it is also important to point out that letters of allotment [which constitutes an offer] are ordinarily subject to timelines. In this regard, the allottee, the Plaintiffs not excepted, would have been called upon to issue a letter of acceptance within 30 days from the date of the postmark.

64. Suffice it to underscore that the issuance of a letter of acceptance would confirm the acceptance of the offer by the allottee. In the absence of a letter of acceptance, the legal connotation is that the offer would not have been accepted. [See the decision of the supreme court in *Moi University v Zaippeline & another (Petition 43 of 2018)* [2022] KESC 29 (KLR) (17 June 2022) (Judgment)].

65. On the other hand, it is also imperative to underscore that the payment of the stand premium is also time bound. In addition, where the stand premium is not paid within the circumscribed timeline, the failure and/or neglect to do so invalidates the letter of allotment.

66. Barring repetition, it is apposite to recall that PW1 neither tendered nor produced the letter of allotment, the letter of acceptance or any evidence denoting payment of the stand premium. Instructively, no evidence was tendered to underpin the claim that the suit property was allocated to the Plaintiffs herein.

67. To my mind, the Plaintiffs herein have failed to justify their claim to and in respect of the suit property. Notably, it was incumbent upon the Plaintiffs to tender before the court plausible and cogent evidence to prove not only the allocation of the suit property but compliance with the terms thereof and ultimately, the issuance with the Certificate of Title.



68. To buttress the foregoing exposition of the law, it suffices to reiterate the holding in the case of Joseph N.K. Arap Ng'ok versus Mojjo Ole Keiwua & 4 others [1997] eKLR, where the court stated and held thus:

It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.

69. Other than the foregoing, it is also not lost on the court that PW1 testified that the suit property is currently registered in the name of Mukuru Community Centre. In fact, the Certificate of Title which was tendered and produced before the court as exhibit P1 attests to the fact that the suit property is registered in the name of Mukuru Community Centre and same is held by the trustees whose name are highlighted on the face of the Certificate of Title.

70. For ease of appreciation, it is instructive to reproduce the testimony of PW1 whilst under cross examination by learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

71. Same stated as hereunder:

“I do confirm that the certificate of title was issued to Mukuru Community Centre. I do confirm that I have not sued Mukuru Community Centre. Instead, we have sued the 3<sup>rd</sup> Defendant. However, I do confirm that the certificate of title is not in the name of the 3<sup>rd</sup> Defendant.”

72. What comes out clearly from the foregoing excerpt is to the effect that the suit property is currently registered in the name of Mukuru Community Centre. However, the said Mukuru Community Centre has not been made a party in the instant matter.

73. The question that does arise and which the court must grapple with is whether the court can make a declaration affecting ownership of the suit property without the joinder of a person or organization that is currently registered as the owner thereof. To my mind, the Plaintiffs herein were enjoined to implead and include the current registered owner of the property. It is only then that the court would have been disposed to interrogate the validity or otherwise of the Title of the registered owner. [See Article 10[2], 47 and 50[1] of *the Constitution* of Kenya, 2010].

74. At any rate, there is no gainsaying that if the court were to make an order that impacts upon the Title of a third party who has not been impleaded, such an order would violate the fundamental rights of the third party. Pertinently, such an action would be contrary to the concept of the due process of the law.

75. In this regard, it suffices to cite and reference the holding of the Court of Appeal in the case of Kisumu County Assembly Service Board & another v Kisumu County Assembly Public Service Board & 4 others [2015] eKLR, where the court stated as hereunder:

1. Due process is a fundamental aspect of the rule of law. Due process is the right to a fair hearing. The right to a fair hearing encapsulated in the audi alteram partem rule (no person should be condemned unheard) and founded on the well-established principles of natural justice, is not a privilege to be graciously accorded by courts or any quasi-judicial body to parties before them. As is clear from Articles 47 and 50 of our Constitution, it is a constitutional imperative.

1. Whereas the right to a fair hearing varies from one case to another depending on the subject of the matter in issue, its irreducible minimum is now well settled. In granting that right,



the court or the administrative body or person concerned should not make it a charade by taking perfunctory actions for the sake of running through the motions to be seen to have complied with it. The person charged is entitled to what, in legal parlance is referred to as the right to “notice and hearing.” That means he must be given written notice which must contain substantial information with sufficient details to enable him ascertain the nature of the allegations against him. The notice must also allow sufficient time to interrogate the allegations and seek legal counsel where necessary. In the epigram of the indomitable Lord Denning in *Kanda v. Government of Malaya*

“If the right to be heard is to be a real right which is worthy anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them.”

76. Before departing from the issue herein, there is one critical point that merits mention and short discussion. The point relates to and concerns the legal consequence of a letter of allotment whose terms are not complied with or acted upon within the prescribed timeline.
77. Suffice it to underscore that PW1 did not tender and/or produce before the court any letter of acceptance or receipt denoting payments of the stand premium within the prescribed timeline. To this end, there is no gainsaying that the prescribed timeline lapsed.
78. The question that does arise is whether the letter of allotment [which was never produced] and whose terms were not complied with, remains alive and capable of underpinning the Plaintiffs’ claim to the suit property. In my humble view, the answer to this question is to the effect that the impugned letter of allotment died a natural death once the terms thereof were not met.
79. The Supreme Court of Kenya in the case of *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment), had occasion to address the issue pertaining to the legal import and tenor of a Letter of allotment whose terms have not been complied with.
80. For coherence, the Supreme Court stated thus;
  58. So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr Joseph NK Arap Ng’ok v Justice Moijo Ole Keiyua & 4 others* [\*CA 60/1997\*](#) [unreported]; and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows: “It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all.” [Emphasis added].
  59. The pronouncement in *Gladys Wanjiru and Dr Joseph NK Arap Ng’ok* (supra) has been echoed in various Environment and Land Court decisions post the 2010 Constitution, including; *Lilian Wanjeri Njatha v Sabina Wanjiru Kuguru & another*, Environment and Land Case No 471 of 2010; [2022] eKLR; [\*John Elias Kirimi v Martin Maina Nderitu & 4 others, Environment and Land Suit No 320 of 2011\*](#); [2021] eKLR; and *Kadzoyo Chombo Mwero v Ahmed Muhammed Osman & 11 others*, Environment and Land Case No 42 of 2021; [2021] eKLR, to mention but a few.
  60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited



to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfilment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter. In *Peter Wariire Kanyiri v Chrispus Washumbe & 2 others*, Environment and Land Court Case No 603 of 2017; [2022] eKLR, Kemei, J held as follows:“

[15].In the case at hand, in the absence of any title registered in the name of the plaintiff, the court is unable to hold that the plaintiff is the registered proprietor of the land. This is because the letter of allotment lapsed within 30 days and the same is of no legal consequences” [Emphasis added].

61. While we agree with the general tenor of the learned Judge’s foregoing pronouncement, we remain uncomfortable with his inference that the allotment letter was of no legal consequence solely because it had lapsed after 30 days. We must reiterate the fact that an allotment letter in and by itself, is incapable of conferring a transferable title to an allottee. Put differently, the holder of an allotment letter is incapable of transferring or passing valid title to a third party on the basis of the allotment letter unless and until he becomes the registered proprietor of the land consequent upon the perfection of the Allotment Letter. It matters not therefore that the allotment letter has not lapsed.
62. Back to the facts of this case, the allotment letter issued to Renton Company Limited was subject to payment of stand premium of Kshs 2,400,000.00, annual rent of Kshs 480,000.00 amongst others. Moreover, the letter was granted on condition that Renton Company Limited would accept it within thirty (30) days from the date of the offer, failure to which it would be considered to have lapsed.
81. Arising from the foregoing discussion, my answer to issue number one [1] is fourfold. Firstly, the Plaintiffs herein failed to tender and produce before the court critical documents/evidence, to underpin their claim to the suit property.
82. Secondly, having failed to tender and produce before the court the critical documents/evidence, there is no gainsaying that the Plaintiffs fell short of discharging the burden of proof placed on same by the law. [See Sections 107, 108 and 109 of the *Evidence Act*, Chapter 80 Laws of Kenya].
83. Thirdly, the letter of allotment, a copy of which was neither tendered nor produced before the court, lapsed by effluxion of time. Consequently, the impugned letter of allotment cannot be relied upon to underpin [sic] a claim to the suit property.
84. Fourthly, it is not lost on the court that the suit property is registered in the name of a third party who was neither joined nor impleaded. In this regard, no adverse orders can issue and/or be granted without the said third party.

Issues Number 2

What reliefs if any, ought to be granted.

85. The Plaintiffs herein had sought for a plethora of reliefs at the foot of the Complaint dated the 18<sup>th</sup> January 2023. Notably, the Plaintiffs sought for a Declaration that same [Plaintiffs] are the lawful proprietors of the suit property.



86. Nevertheless, whilst discussing issue number one [1] herein before, the court has discussed various perspectives touching on the Plaintiffs' claim. Instructively, the court has found and held that the Plaintiffs' claim to the suit property is not only premature and misconceived, but legally untenable.
87. Arising from the foregoing, there is no gainsaying that the declaratory order as pertains to ownership of the Suit Property, which is being sought for by and on behalf of the Plaintiffs, cannot be issued and/or be granted.
88. Secondly, the Plaintiffs have also sought for an order to remove the Defendants from the suit property. To my mind, the crux of the orders being sought by the Plaintiffs touch on and concern [sic] eviction of the Defendants.
89. The question that arises is whether the Plaintiffs herein, who have no lawful rights to the suit property, can procure and obtain eviction orders. Suffice to underscore that the prayer for eviction has been sought for in vacuum.
90. Finally, the Plaintiffs have sought for an order of permanent injunction, albeit described as an order stopping the Defendants from interfering with the suit property. Pertinently, an order of permanent injunction can only issue to vindicate and preserve the rights of a lawful owner and not otherwise.
91. To the extent that the Plaintiffs are not the registered owners of the suit property, same [Plaintiffs] cannot partake of an order of permanent injunction. [ See Kenya Power & Lighting Co. Limited v Sheriff Molana Habib (Civil Appeal 24 of 2016) [2018] KEHC 5027 (KLR) (26 July 2018) (Judgment)].

**Final Disposition:**

92. Flowing from the analysis [details highlighted in the body of the judgment], it is crystal clear that the Plaintiffs herein have failed to discharge the burden of proof as pertains to the claim to the suit property.
93. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder:
  - i. The Plaintiffs suit be and is hereby dismissed.
  - ii. Costs of the suit be and are hereby awarded to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants only.
94. It is so Ordered.

**DATED, SIGNED AND DELIVERED ON THE 16<sup>TH</sup> DAY OF DECEMBER 2024**

**OGUTTU MBOYA,**

**JUDGE.**

In the presence of:

Benson – Court Assistant.

Mr. Ojiambo h/b for Mr Isaac Aloo for the Plaintiffs.

Ms. Rose Nyawira Senior Litigation Counsel for the 1st and 2nd Defendants.

N/A for the 3rd Defendant.

