



Kide & another v Sawe & 3 others (Environment & Land Case E007 of 2024) [2025] KEELC 2908 (KLR) (26 March 2025) (Judgment)

Neutral citation: [2025] KEELC 2908 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E007 OF 2024**

**CK NZILI, J
MARCH 26, 2025**

BETWEEN

PHILIP PKOPUS KIDE 1ST PLAINTIFF

PAUL KIDE 2ND PLAINTIFF

AND

SIMON KIPSANG SAWE 1ST DEFENDANT

DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER 2ND DEFENDANT

DIRECTOR LAND ADJUDICATION & SETTLEMENT 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

1. The plaintiffs approached this court through a plaint dated 20/2/2024. They seek:
 - (a) Permanent injunction restraining the defendants, agents, servants, or employees or anyone acting for them from selling, entering into, constructing, or doing any adverse acts on land known as parcel No. 576 Chepchoina Settlement Scheme Phase 11 measuring 2.04 Ha.
 - (b) Revocation of any purported reallocation of plot No. 576 measuring 1.02 Ha Chepchoina Settlement Scheme Phase 11 issued to the 1st defendant.
 - (c) Declaration that they are the legitimate allottees of parcel No. 576 Chepchoina Settlement Scheme Phase 11 measuring 2.04 Ha.
 - (d) Declaration that the defendants jointly and severally are trespassers, hence liable to compensate them with general damages.



- (e) Costs of the suit.
 - (f) Any other relief the court may deem fit to grant.
2. The plaintiffs averred that the suit land was first allocated to Philip Pkopus Kide in 1997, pursuant to a Presidential Directive who then complied with the terms and conditions of the allotment letter by taking vacant possession and control of the suit land. The plaintiffs averred that in 2007, the 3rd defendant directed all the allottees to surrender the initial letters of allotment, which was done, and he was issued with an allotment letter dated 6/2/2024. The 2nd plaintiff averred that he was still in possession of the suit land upon purchase, with use, occupation and control of the same to date for about 26 years.
 3. Again, the plaintiffs averred that in mid-January 2023, they received information that there were unknown people on the land attempting to put up a fence. Further, the plaintiffs averred that they learned that through fraud and collusion, the lands registry processed and issued the 1st defendant with ownership documents for 1.02 ha of the suit land, in total disregard of the first allotment and their overriding interests, after a purported re-allocation by the 3rd defendant, despite a ground report by the 2nd defendant, clearly showing that there was an adverse interest on the suit land.
 4. Similarly, the plaintiffs pleaded that before making the purported re-allocation, the 3rd defendant ought to have made inquiries to satisfy itself that the subsequent decision would not prejudice anyone. The plaintiffs averred that the 3rd defendant acted maliciously, unfairly and illegally in purporting to re-allocate the land to the 1st defendant. The 2nd plaintiff averred that while following up on the discharge process for the suit land from the 2nd defendant, he faced backlash and frustration, forcing him to escalate the issue to the 3rd defendant in Nairobi, where he was allowed to pay for the said plot, now awaiting the discharge.
 5. The 1st plaintiff averred that his allocation has never been revoked or the suit property re-allocated to any other person, including the 1st defendant or otherwise. The plaintiffs aver that the law requires that the 3rd defendant, prior to acting as it did, to have notified the 1st plaintiff of his default, issued a formal notice of breach, and accorded him an opportunity to remedy the same within a prescribed timeline. The plaintiffs averred that the 3rd defendant ought to have advertised and invited members of the public or those with the desire to be allocated the land and, lastly; for the 3rd defendant and the survey office to avail the ground report.
 6. In view of the foregoing, the plaintiffs termed the subsequent acts of omission or commission of the defendants as null, illegal, and void, they had never parted with ownership and possession of the suit property. The plaintiffs pleaded the particulars of fraud and illegality on the part of the 1st, 2nd, and 3rd defendants. The plaintiffs averred that their rights and interests on the land were superior to those of the 1st defendant's, who had never taken possession of the land and knew about their occupation. The 2nd plaintiff averred he was a bona fide purchaser for value, hence entitled to use, occupation and dealings on the suit property, and termed the threats or acts of the defendants as amounting to trespass and a means of depriving him of his land contrary to the law.
 7. The 1st defendant opposed the suit through a statement of defense dated 15/7/2024 denying that the 1st plaintiff was the first allottee of the suit property in 1997 as alleged or at all, or ever having complied with the terms and conditions of the allotment letter in the first place. The 1st defendant averred that the plot was offered to him by the 3rd defendant upon the 1st allottee failing to accept the offer letter; hence, the allocation to him was procedural, legal and made in good faith.



8. Further, the 1st defendant averred that upon being offered the plot, he accepted the offer by complying with all the conditions set out in the letter and was subsequently shown the plot by the agents of the 2nd defendant, hence taking vacant possession and remaining therein till to date. The 1st defendant averred that the 3rd defendant had no legal obligation to revoke the allotment or notify the 1st plaintiff of any breach and how to remedy the same, as the 1st plaintiff had never complied with the conditions on the offer letter.
9. The 1st defendant averred that owing to the fact that the 1st plaintiff did not acquire any proprietary interest over the suit property, he could not legally purport to transfer any interest over the suit land to the 2nd plaintiff. The 1st defendant averred that he is lawfully and legally in possession of the suit property, and consequently, the particulars of fraud as pleaded were denied in toto.
10. The 2nd, 3rd, and 4th defendants opposed the suit through a statement of defense dated 29/7/2024. The 2nd, 3rd, and 4th defendants averred that the suit property measuring 2.04 ha was allocated to the 1st plaintiff on 6/2/2012, who breached the conditions of the offer, whereupon the plot was in consequence, re-allocated to the 1st defendant, since the ground and the record status report had found that the plot had no structure, nor was it fenced as was reported by the settlement officer.
11. The 2nd, 3rd, and 4th defendants denied the alleged particulars of fraud and collusion, terming their actions and or registration to the 1st defendant as done in utmost good faith, in the execution of their statutory duties and total compliance with the law, pursuant to their statutory mandate. The 2nd, 3rd, and 4th defendants denied the adverse interest of the 2nd plaintiff to the suit property since the 1st plaintiff could not sell the land to the 2nd plaintiff, for it did not belong to him. The 2nd, 3rd, and 4th defendants averred that the 1st plaintiff ought to have followed the conditions for allocation which were given to him by the Settlement Fund Trustees; otherwise, it could not have resulted in his loss of the suit property.
12. Equally, the 2nd, 3rd, and 4th defendants averred that several ground and status reports were drawn up in relation to the suit property, all highlighting the settlement officer's observation upon physical inspection of the suit property. Further, the 2nd, 3rd, and 4th defendants averred in the alternative and without prejudice to the foregoing that the 1st plaintiff, having been allotted the suit property through a letter dated 6/2/2012, which he did not comply with its terms and conditions, including writing an acceptance letter of the offer, he had no contract with Settlement Fund Trustees, upon expiry of the offer after 90 days; hence the land reverted to the Settlement Fund Trustees, currently Land Settlement Fund. The 2nd, 3rd, and 4th defendants averred that the suit disclosed no cause of action against them.
13. At the trial, Philip Pkopus testified as PW1. He adopted a witness statement dated 16/9/2024 as his evidence-in-chief. He told the court that the suit land property initially been allocated to his elder brother in 1997 pursuant to a presidential directive, who complied with the terms and conditions of the letter of offer by taking control and possession up to 1999, when he gifted it to him and has since been tilling the land.
14. PW1 told the court that after the 3rd defendant sought the surrender of the allotment letter in 2007, he did so and obtained a new allotment letter dated 6/2/2012. He said that he has been in peaceful occupation of the land for the last 26 years until mid-January, 2023, when his caretaker reported some unknown persons who had visited the land, attempting to erect a fence, yet he has been the owner throughout. PW1 termed the attempt to process, register, and issue an allocation for plot No. 576 measuring 2.04 ha to the 1st defendant as fraudulent and amounting to collusion with the Ministry of Lands officials, in total disregard to his overriding interest as the first allottee of the land.



15. PW1 denied receipt of any notice of intention to repossess his land, surrender notice, expiry of offer notice, revocation notice, and or an advertisement for the reallocation of his plot. Again, PW1 said that the ground reports had shown that there was an adverse interest on the suit property, and the 3rd defendant made no inquiries, which would have established that the plaintiffs were in possession of the land. PW1 termed the acts of the 3rd defendant as malicious, unfair and illegal. Equally, PW1 blamed the 2nd defendant for frustrating him until he had to travel to Nairobi for assistance from the 3rd defendant, who accepted his payments and was now awaiting a discharge. PW1 said that he never obtained a revocation of his offer letter, notice of breach or reallocation of the plot as to re-apply for the plot despite being in occupation of the same throughout.
16. More so, PW1 told the court that the defendants owed him an explanation as to how the 1st defendant came to own his land and was then at risk of losing his valuable asset, where he had invested for 26 years. PW1 relied on a ground and record status report dated 10/11/2022 as P. Exhibit No. '1'; offer letter dated 6/1/2022 as P. Exhibit No. '2'; offer letter dated 22/8/2008 as PMFI-'3'; seller payment dated 1/8/2023 as PMFI-'4'; sale agreement dated 29/8/2012 as PMFI-'5'; sale agreement as PMFI-'6'; lease agreement dated 19/12/2022 as PMFI-'7'; letter to the Land Adjudication and Settlement Officer as PMFI-'8'; assistant chief's letter dated 29/1/2024 as PMFI-'9', delivery notice or invoice for Kenya Seed Co. Ltd as PMFI-'10'; OB No. 13/7/03/2024 as PMFI-'11'; ID Card copy as PMFI-'12' and '13' and photographs as PMFI-'14'.
17. In cross-examination, PW1 told the court that he was supposed to pay Kshs.26,540/=, within 90 days, which he did not clear, though he stayed on the land for 2 years and handed over the same to his brother in 1999, who notified the Director of Land and Settlement over the same. PW1 told the court that Philip Pkopus Kide and Philip Pkopus refer to the same person, though he had no verifying affidavit to that effect.
18. PW1 stated that he never complied with the terms and conditions of the offer letter within 90 days. As to the default clause in the letter of offer, PW1 said that he was unaware of its implications, otherwise, his brother was the one who was supposed to pay the amount. Equally, PW1 admitted that he had not obtained either a discharge form or a certificate of title for the land. PW1 said that after exchanging the land with his brother, he left him to carry out all his obligations on the offer letter.
19. Paul Kide, the 2nd plaintiff, testified as PW2. He relied on a witness statement dated 16/9/2024 as his evidence in chief. PW2 told the court that PW1 was the initial allottee of the land in 1997, until a new allotment letter was issued on 6/2/2022. He primarily associates his evidence with that of PW2. PW2 told the court that he did not pay for the land initially because there was a pending court case that was finalized in 2020, following which he visited the lands office in December and was given the go-ahead to make payments. PW2 told the court that he sought and obtained PMFI-'9' from the area chief confirming that he was the one on the land.
20. Similarly, PW2 stated that he equally visited the lands office in Nairobi in 2012, after which a ground report was prepared. Other than a witness statement, PW2 did not sign a verifying affidavit as well as an authority to sue in favor of the 1st plaintiff. PW2 confirmed exchanging the suit property with PW1 in 1997 when he also took vacant possession. PW2 said that his payment was made late in 2022 because of the pending court case; otherwise, he was the one who had been cultivating on the suit property, as captured in the ground report.
21. PW2 admitted that in the absence of any payments within 90 days, the letter dated 6/2/2012 became invalid by 6/9/2012. PW2 said that after 6/9/2012 and by 2022, when he made the payments, he was unaware that the land had already reverted to Settlement Fund Trustees. PW2 told the court



- that though he had exchanged the land with PW1, the said agreement had not been disclosed to the Settlement Fund Trustees. Equally, PW2 told the court that he was not present during the site visit, though the ground report referred to the person in the cultivation of the land. PW2 told the court that when he made inquiries about the availability of the land, the land officer referred him to the area chief, who wrote a letter confirming that the land was under his occupation. PW2 said that he made payments on 1/8/2023 after he was given the go-ahead to do so, since he was the one on the land as per the ground report.
22. Consolata Jacinta Chemotich, the wife of PW2, testified as PW3. Relying on a witness statement dated 16/11/2024 as her evidence-in-chief, she confirmed that she was the one who paid the money through M-Pesa as per PMFI-(5) on 1/8/2023 to Settlement Fund Trustees, which was close to 11 years after the 90 days had expired as stipulated in P. Exhibit No. (2). She confirmed that the payment was done without seeking for enlargement of time in the offer letter. Similarly, PW3 told the court that by the time the payment was made, PW2 did not have an allotment letter, charge, or application letter for the land other than the offer letter belonging to PW1, a brother-in-law.
 23. Simon K. Sawe testified as DW1. He relied on his witness statement dated 15/1/2025 as his evidence-in-chief. DW1 told the court that plot No.576 Chepchoina Phase 11 Settlement Scheme was offered to him by the 2nd defendant through the County Land Adjudication and Settlement Officer Trans Nzoia vide a letter of offer dated 8/9/2022. He said that he met all the terms and conditions in the offer by paying the requisite premium within the stipulated time, reported to the County Land Adjudication Office, was shown the plot, and took vacant possession after the land was transferred to his name. DW1 said that he was put into possession by officers from the offices of the 2nd and 3rd defendants.
 24. DW1 produced copies of the offer letter dated 8/9/2022, payment receipts dated 15/9/2022 and 4/11/2022, and a letter from the Director of Land Adjudication and Settlement dated 4/12/2024 as D. Exhibit Nos. (1), (2) and (3). According to DW1, the parcel measures 2 ½ acres. DW1 said that while visiting the suit property, he found some maize growing thereon.
 25. Asked whether he measured the land to confirm if it was 2 ½ acres and not 5 acres on the ground, DW1 said that he did not ascertain the acreage, but from the scene visit, it became evident that the land was actually 5 acres, which led to a rectification letter dated 4/12/2024 and a discharge of charge. As a result, DW1 said that he was charged an extra Kshs.12,880/=, as per an acknowledgment of payments from the Settlement Fund Trustees.
 26. The 2nd, 3rd, and 4th defendants did not call any evidence to sustain the defense or produce the list of documents dated 24/7/2024. After the close of the defense case, parties were directed to file and serve written submissions.
 27. The plaintiffs rely on written submissions dated 3/3/2025. It is submitted that despite the plaintiffs occupying the land for 26 years, it was fraudulently and illegally re-allocated to the 1st defendant by the 3rd defendant, even when the ground report showed that there was an adverse interest on the suit property without making inquiries on whose adverse developments were. Reliance was placed on John Masinde Kanchenja -vs- Land Adjudication & Settlement Officer Trans Nzoia County & Others, Jeremiah Marabu Miyoro (IP) (2018) eKLR.
 28. The plaintiffs submitted that the reallocation was unfair, unlawful, malicious, illegal, and contrary to the principles of governance under Article 10 of the Constitution. The plaintiffs submitted that the acts and threats of the defendants amount to trespass and infringement of their rights to land. Reliance was placed in Charles Opondo Ochieng & Others (All suing on their own behalf and Jacob Pepela) &



Others -vs- Kabarak Farm Ltd & Others; County Government of Trans Nzoia & Others (IP) [2021] eKLR.

29. The 1st defendant relied on written submissions dated 3/3/2025, isolating two issues. On whether the 1st plaintiff had any contact with the Settlement Fund Trustees, the 1st defendant submitted that an allotment letter is a mere invitation to treat awaiting the fulfillment of the conditions set, therefore it cannot confer an interest in land as held in *Torino Enterprises Ltd -vs- Attorney General* (Petition 5 (E006 of 2022) [2023] KESC 79 [KLR] (22nd September 2023). In addition, the 1st defendant submitted that after the letter dated 6/2/2012 was not complied with, it followed that there was no contractual relationship with the Settlement Fund Trustees, capable of conferring the 1st plaintiff with any proprietary interest over the suit property that he could pass to the 2nd plaintiff. Reliance was also placed on *James Kiprono Tinego -vs- Peter Khisa Musungu* [2012] eKLR.
30. The issues calling for my determination are:
- (1) If the plaintiffs have proved that they complied with the letter of offer and hence were entitled to plot No. 576.
 - (2) If the 2nd, 3rd, and 4th defendants followed the law on revocation, repossession, and subsequent reallocation of plot No. 576.
 - (3) If the 1st defendant was lawfully allocated and registered as the new owner of plot No. 576.
 - (4) If the plaintiffs are entitled to the reliefs sought.
 - (5) What are the orders as to costs?
31. The plaintiffs' claim is that plot No. 576 was first allocated to the 1st plaintiff in 1997, as per PMFI(3), where he took vacant possession, fenced it, and occupied it until he obtained a letter of offer dated 6/2/2012 from the Settlement Fund Trustees. The terms of the letter were that he reports to the 2nd defendant to be shown the plot boundaries and be issued with a letter confirming the same before documentation. The offer was valid for 90 days and required him to pay Kshs.26,540.40/= for the plot, failure of which the offer would be canceled without any further notice. PMFI(3) shows that the initial allottee was to deposit to the 2nd defendant either Kshs.21,394.20/= or a ten percent deposit of Kshs.2,139.40/= within 90 days, or else the offer would be canceled, on top of reporting to the 2nd defendant to be shown the plot boundaries.
32. The law relating to the creation of a Settlement Scheme before the enactment of the *Land Act* 2012 was the Agriculture Act, the retired Registered *Land Act*, and the regulations made thereunder. The Settlement Fund Trustees, now known as the Land Settlement Fund, was established by Agriculture Regulations 1963 LD No. 352/1963 under the Agriculture Act, Cap 318. It would receive monies from the government to acquire land that would be planned, surveyed, subdivided, and given to settle landless Kenyans on loans and or standard premiums until it was discharged and transferred to the allottee, upon full repayment of the premiums, paid either in installments or full one-off payments, whichever applied. Any landless person could qualify for the allocation of one parcel of land upon applying for the same to the chairperson (now the Deputy County Commissioner) of the District Selection Settlement Committee, for the area where the land is situated or apply directly to the Director in Nairobi. A committee ordinarily would sit to verify the application, after which they would give a letter of offer. Thereafter, a person would be shown the land and pay a 10% deposit to the Land Settlement Fund, or make a one-off payment. Ordinarily, there are conditions attached to the allocation. After the payment of the deposit and fencing, the allottee was to prepare a dwelling structure and cultivate the land. The allottee was also obligated to put beacons on the land.



33. If the conditions were not met, then the land could be repossessed. Every parcel of land was issued with a parcel number for planning and survey purposes. It is this parcel number that would be in the letter of offer. The settlement charge to a land loan was what the settlor or allottee was supposed to pay in installments or as a one-off, depending on the terms and conditions in the offer letter. It was only after clearing that loan and the amount that one could be issued with a title deed. Ordinarily, the loan was paid from the agricultural proceeds. Once the loan payment was made, a discharge of charge was prepared. A settlor on payments of the loan was issued with receipts and statements. See James Kiprono Tinego (*supra*).
34. Further, the settlement officer would show the settlor the land to settle on. The payment was in correspondence with the number of acreage offered. The documentation for an allottee included the area list, the file and the maps where a person was settled in the parcel number. The allocation committee ordinarily would maintain an accountability register for the allottees.
35. Allocation of land, therefore, in a settlement scheme means three things: (1) the Ground, (2) Map and (3) Numbering. A settlor has to be physically shown the land, and once satisfied, the settlor has to pay the 10% deposit against the number provided, or make a one-off payment. The settlement officer keeps the records of all plot numbers against the settlor's name.
36. After the documentation, the land remains the Settlement Fund Trustees' land until a settlor is discharged. A settlor is supposed to sign for the parcel number allocated to him as per his file number. It is in the file number that there could be a certificate of acceptance, duly signed by the settlor. A charge is a document showing how the payment for the land is to be made. Payments depend on acreage. There are two types of payments. (1), the charge for the land and (2), the development loan for buying equipment, fencing, building a house, and the procurement of seeds. It is the settlor who requests for a development loan.
37. The Land Adjudication and Settlement Office and the survey department are fully involved in the process. An area list is also prepared, showing all the allottees. For any payments, a settlor is issued with receipts. Upon clearing the loan, a settlor is issued with a discharge of charge and a transfer. For a transfer to happen, parties must go to the Land Control Board to change ownership of the parcel number.
38. Regarding cancellation or recall of a letter of offer, ordinarily, a Land Adjudication and Settlement Officer would visit the ground and confirm whether the allottee has made developments thereon. The letter of offer would have a default clause that failure to pay the deposit or the total amount would lead to cancellation of the offer without further notice.
39. In *Green & Another -vs- Kazungu & Others* (Civil Appeal E017 of 2020 [2023] KECA 991 [KLR] (23rd September 2022) (Judgment), the court held that the principle of legitimate expectation could not be invoked if the 1st respondent did not comply with the requirements of the offer letter. A legitimate expectation cannot override the law and a letter of offer was subject to revocation by the offeror. The court observed that an offer letter by a government official cannot be used to cancel through the back door a certificate of title, since Section 26 of the *Land Registration Act* is specific on what basis a title to land can be challenged.
40. In *M'Mugwika M'Rungongo -vs- Settlement Fund Trustees & Another* [2022] eKLR, the court cited *Arthur Matere Otieno -vs- Dorina Matsanza* [2003] eKLR, that the right to repossess or forfeit land was the preserve of the Central Land Board, and that without the minutes, the notices of repossession, the approval for forfeiture and reallocation by the board thereof, the same could not be termed lawful.



The court said that failure to attach minutes, a notice of repossession and a cancellation duly served upon the appellant, the process of recall and revocation of the offer letter was unlawful.

41. In Cecilia Nyambura Ndungu -vs- Ol Kalou Farmers' Co-Operative Society [2018] eKLR, the court held that the blame for double allocation falls with the Settlement Fund Trustees. In Joel Kipkosgei Sigei -vs Peter Maina Macharia & Another [2019] eKLR, the court observed that the 2nd defendant had procured neither the acceptance letter of the allocation nor the documents of discharge of the loan.
42. As to fraud, the court cited RG Patel -vs- Lalji Mukanji [1957] EA 314, that allegations of fraud must be strictly proved through the evidence on a higher scale than on a balance of probabilities. The court cited Section 174 of the Agriculture Act (repealed by the) Agriculture & Food Authority Act, which grants the Settlement Fund Trustees powers to terminate any interest in land in respect of which the advance was made; who may thereupon take possession of the land in question. The court found that mere occupation of the suit land by the defendant, who had no allotment letter in his favor, did not confer ownership to him and, hence, had not established any proprietary interest or right capable of protection.
43. Applying the foregoing guiding principles to the instant suit, it is not disputed that on 6/2/2012, Philip Pkopos was issued with a letter of offer for plot No. 576 Chepchoina Phase 11 Settlement Scheme Trans-Nzoia District. The offer was valid for 90 days. He was to pay Kshs.26,540.40/=, in order for him to be documented; otherwise, there would be cancellation of the offer without further notice.
44. There is no evidence from the 1st plaintiff that he complied with the terms and conditions on time or at all. He instead testified that he exchanged the plot with the 2nd plaintiff, who took vacant possession and has since been on the suit property. The exchange or transfer of the plot to the 2nd plaintiff did not involve the allocating authority at all. The letter of offer had no provision for re-assignment of the same to another third party. There was no request or notice that the 1st plaintiff wrote to the allocating authority informing them or seeking approval, consent, or authorization to assign the letter of offer to the 2nd plaintiff. Again, there was no evidence tendered showing that for 26 years, the allocating authority was privy to or aware that it was the 2nd plaintiff on the suit property, up to and including the day the ground was visited by the Land Adjudication and Settlement Officer to prepare P. Exhibit No. (1).
45. Equally, the plaintiffs relied on a letter of offer dated 22/8/2008 issued to one Samuel N. Lemale, an elder brother. If the plaintiffs had been on the land lawfully from 1997 as alleged, there is no evidence that the letter of offer dated 22/8/2008 was accepted by the said brother and its terms and conditions complied with by paying Kshs.21,394.20/= or a deposit of Kshs.2,139.40/=, within 90 days of the letter, for the said brother to be documented as the owner of the land.
46. In Torino Enterprises Ltd -vs- Attorney General(supra), a letter of offer was termed as a mere invitation awaiting the fulfillment of the terms and conditions stipulated therein, which is incapable of conferring any proprietary interest in land. The court cited Dr. Joseph Arap Ngok -vs- Justice Moiijo Ole Keuiwa & Others C.A, No. 60 of 1997 and Gladys Wanjiru Ngacha -vs- Teresa Chepsaat & Others [2008] eKLR, that a letter of offer does not constitute a contract between the offeror and the offeree and does not confer an interest in land at all.
47. In James Kiprono Tinego (supra), the court observed that if there had been a contract that could only exist after a deposit had been paid toward the acquisition of the land, the depositor could have been entitled to notice before the forfeiture took place.



48. The court observed that the law has procedures and processes to be adhered to, which neither the court nor the defendant could ignore without consequences. The court also observed that its role was to interpret the law as it is, without any sympathy to the parties.
49. The plaintiffs pleaded and testified that they still have possession of the suit property after the purchase, have had occupation and control of the land for the last 26 years, and it was only in mid-January 2023, that the 1st defendant attempted to trespass into and put up a fence. They termed the acts as amounting to trespass and infringement of their right to property. The plaintiffs pleaded that there was illegality, fraud and collusion in the repossession, reallocation and issuance of interest on the land to the 1st defendant without prior notice or advertisement for the forfeiture, repossession, and reallocation. The particulars of fraud, illegality, and collusion were set out in paragraph 27 of the plaint.
50. As indicated above, the plaintiffs have been unable to prove that they accepted and met the terms and conditions of the letters of offer in 2008 and 2012. The attempt to do so, according to PW1, 2, and 3, was in late 2022, which was almost 11 years after the 2nd letter of offer had lapsed.
51. The land had already reverted to the offeree. The plaintiffs made the payments without first seeking and obtaining a fresh offer letter from the allocating authority, or after making a fresh application letter or writing an acceptance letter for the land. There are no letters from the Director of Lands and Settlement Nairobi, regularizing the allocation before the acceptance of the payments. There is no evidence tendered that, other than the chief's letter, the allocation committee had verified from the area list and on the ground that parcel No. 576 was still available for allocation to the plaintiffs by 2022, when payments were allegedly made.
52. The principle of the four corners of an instrument in contract interpretation in law insists that a document's meaning should be derived from the document itself without reference to anything outside of the document. Courts give effect to the intention of the parties in construing a contract. See Fidelity Commercial Bank Ltd -vs- Kenya Garage Owners Industries Ltd NRB C.A. (Civil Appeal No. 61 of 2013) [2017] eKLR. The plaintiffs insist that they made payments and were issued with a receipt by the Land Settlement Fund on 1/8/2023, as per PMFI-(4). A document marked for identification is not produced correctly before a court of law as held in Kenneth Nyaga Mwige -vs- Austin Kiguta & 2 others [2015]
53. A deposit slip is not equivalent to a letter of offer. The same was not accompanied by an acceptance letter or a fresh offer letter bearing the names of the plaintiffs from the Settlement Fund Trustees. It does not also refer to the subject for the loan payment of plot No. 576. Parties are bound by their pleadings. A party as held in Raila Amollo Odinga & Others -vs- IEBC [2017] eKLR, may not be allowed to travel outside its pleadings. There is nowhere in the plaint where the plaintiffs pleaded that they regularized the offer letter, albeit out of time. The plaintiffs did not plead that they sought and obtained prior approval for the exchange of the land between themselves from the allocating authority, which was accepted on account of the prolonged occupation of the land.
54. Equally, the plaintiffs did not plead that they wrote an acceptance letter to the offer in 2008 and 2012, expressing any inability to meet the terms and conditions by way of payments. Again, the plaintiffs did not plead that they sought for an extension of time or requested to pay the acceptance sum outside the 90 days, from the allocating authority. Additionally, the plaintiffs did not plead what terms and conditions the 2nd, 3rd, and 4th defendants breached.
55. Above all, since the plaintiffs alleged that payments were made directly to the Land Settlement Fund and not the 2nd, 3rd, and 4th defendants. There was no pleading on how there existed any privity of contract or owing of a statutory duty or obligation by the 2nd, 3rd and 4th defendants, yet there was no



privity of contract between them. There is no evidence that the Land Settlement Fund communicated the payment of the sum to the 2nd, 3rd and 4th defendants.

56. In *David Muhangi Kung'u -vs- Attorney General & Another* [2018] eKLR, the court observed that the Settlement Fund Trustees, now Land Settlement Fund, is a body corporate previously established under the Agriculture Act now repealed by Agriculture and Food Authority 2014, which is recognized under Section 135 Part 1X of the *Land Act*, setting out the mechanism through which a settlement scheme is run. The plaintiffs have not joined the Land Settlement Fund Trustees in this suit. The nexus between the role of the 2nd and 3rd defendants in the alleged breach of the letter of offer has not been pleaded. It may very well be that the 2nd and 3rd defendants under Sections 134 and 135 of the *Land Act* are members of the committee that is in charge of the settlement scheme.
57. However, there is no evidence that the plaintiffs wrote to and demanded that their occupation of the land be regularized in view of the payment made on 1/8/2023. Even after the payments, no discharge of charge was issued to the plaintiffs. As held in *Joel Kipkosgei Sigei* (supra), the lack of an acceptance letter of the allocation and documents of discharge of the loan would indicate no proprietary interest was available for the land to the claimant.
58. The plaintiffs have based their claim on fraud, illegality and collusion on the part of the 3rd defendant to deny them the right to the land despite long occupation. Section 174 of the repealed Agriculture Act granted the Settlement Fund Trustees, the mandate and powers to terminate any interest in land in respect of which terms and conditions of the offer had not been complied with. The section availed the Settlement Fund Trustees powers to take remedial action including repossessing the land in question.
59. In this suit, the plaintiffs, in the absence of a valid letter of offer, acceptance of the same, payment of the loan, issuance of a discharge, and a title deed, had no proprietary interest or rights conferred upon them by law, capable of protection under Article 40 of the *Constitution*.
60. There is no evidence that the Land Settlement Fund had issued the plaintiffs with a fresh letter of offer, extending the one dated 6/2/2012 for the payments of 1/8/2023 to be made by the 2nd plaintiff. Equally, there is no evidence that there was a valid offer letter and an acceptance as of 8/9/2022, when the 1st defendant was offered a letter of offer for the land by the 3rd defendant and made payments on 4/11/2022 as per D. Exhibit Nos. (1), (2) and (3). It is quite apparent that the payments by the plaintiff for the land were an afterthought and were being made with the sole intention of regularizing a non-existent letter of offer or contract.
61. There is no evidence that the 2nd, 3rd, and 4th defendants were privy to any existing and or valid letter of offer, an acceptance offer, and a discharge of charge issued by the 3rd defendant, which perhaps they ignored, neglected and or breached in favor of the 1st defendant, to the detriment of the plaintiffs. See *Wandemi Developers Ltd -vs- Ndegwa* (Civil Appael 217 of 2019 [2025] KECA 431 [KLR]) (7th March 2025) (Judgment).
62. Coming to fraud and trespass alleged against the defendants, fraud, being a serious accusation, must be specifically pleaded and proved to a balance higher than in ordinary suits. See *Arthi Highway Developers Ltd -vs- West End Butchery Ltd & Others* [2015] eKLR.
63. Equally, a tort of trespass must also be proved to the required standard. In *Atieno & Another -vs- Nyasota* (Civil Appeal 107 of 2019 [2025] KECA 428 [KLR]) (28th February 2025 (Judgment), the court cited *Charles Ogejo Ochieng -vs- Geoffrey Okumu* [1995] KECA 169 (KLR), that trespass is an injury to a possessory right of another.



64. In *Kagina & Kagina & Others* (Civil Appeal NO. 21 of 2017) [2021] KECA 242[KLR] (3rd December 2021) (Judgment), the court observed that great care needs to be taken in pleadings containing allegations of fraud or dishonesty, for there must be sufficient evidence to justify the allegations, and that fraud must be proved as a fact by evidence.
65. In this suit, the 2nd, 3rd, and 4th defendants averred, regarding the allegations of fraud leveled against the 3rd defendant that though, the 1st plaintiff was the initial allottee, they had no record of payment and compliance with the terms of the offer. Further, it was pleaded that they acted within their statutory duties and in good faith. Additionally, it was averred that the 2nd, 3rd, and 4th defendants followed the law, unlike the plaintiffs who failed to comply with the terms and conditions of the allocation given to them by the Settlement Fund Trustees; otherwise, they would not have lost the land.
66. In paragraph 15, the 2nd, 3rd, and 4th defendants aver that the plaintiffs had no contract with the Settlement Fund Trustees; hence, the land reverted to Settlement Fund Trustees, now the Land Settlement Fund (L.S.F.). The 2nd, 3rd, and 4th defendants aver that no cause of action is disclosed against them. A cause of action is defined as an action on the part of the defendant that gives rise to a cause of complaint to the plaintiff. See *DT Dobie & Co. Ltd -vs- Muchina* [1980] eKLR.
67. The plaintiffs have not refuted the allegation that the letter of offer lapsed by effluxion of time and the land reverted by operation of law to the offeror. The offeror has not been sued in this proceedings. The plaintiffs have not tendered any evidence that it was the 2nd, 3rd, and 4th defendants who repossessed and or re-allocated the suit property to the 1st defendant. Evidence to sustain the allegations of fraud is missing. The court cannot infer fraud, illegality, and collusion without tangible evidence.
68. In *Munya -vs- IEBC* (Petition 2B of 2014 [2014] KESC 38 [KLR] (30th May 2014) (Judgment), the court observed that whoever alleges non-conformity with the law must prove it. The plaintiffs allege that the 1st defendant colluded with unscrupulous officials from the Lands Registry, who processed and issued him an allotment letter in total disregard to their overriding interest, which was the first in time. The evidence of the manner of collusion, persons involved, the complaint made against those officials, and the outcome of the investigation were not produced by the plaintiffs. As already indicated, the law allowed the Settlement Fund Trustees to repossess and re-allocate the suit property. The court has already established that there was no valid offer letter, acceptance and compliance with the terms and conditions of the offer, which in any event, expired on 6/5/2012.
69. For close to 11 years, the plaintiffs made no attempts to regularize their occupation on the suit property, by seeking the renewal of the letter of offer and complying with its terms and conditions. The 2nd - 4th defendants owed no statutory obligation to the plaintiffs regarding the suit property that had reverted to the Settlement Fund Trustees. Therefore, the 2nd - 4th defendants may not be answerable for any alleged breach, christened in the plaint as fraudulent, illegal and amounting to collusion for and on behalf of a non-party to the suit. Equally, the plaintiffs remained illegally on the land and could not sustain a complaint based on trespass or infringement of land rights that, at the time, were non-existent.
70. The upshot is that I find the suit lacking merits. It also discloses no cause of action against the defendants. It is dismissed with costs.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 26TH DAY OF MARCH 2025.

In the presence of:

Court Assistant - A. Ebenyo



Serebe for 1st Defendant present

Karani for the Plaintiff absent.

HON. C.K. NZILI

JUDGE, ELC KITALE.

