



REPUBLIC OF KENYA



**Steel Products [Kenya] Limited v Gichu & 3 others (Environment and Land Case Civil Suit 54 of 2020) [2025] KEELC 580 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 580 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 54 OF 2020**

**JO MBOYA, J  
JANUARY 30, 2025**

**BETWEEN**

**STEEL PRODUCTS [KENYA] LIMITED ..... PLAINTIFF**

**AND**

**GRACE WAIRIMU GICHU ..... 1<sup>ST</sup> DEFENDANT**

**NAIROBI CITY COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Introduction and Background:**

1. The Plaintiff herein [which is a Limited Liability Company] approached the court vide Plaint dated 1<sup>st</sup> October, 2019; albeit filed in court on the 12<sup>th</sup> of March 2020; and in respect of which the Plaintiff seeks the following reliefs [verbatim]:
  - i. A declaration that the purported allocation and issuance of the title known as land reference [LR] number 27224 [L.R No. 164856/1] in favour of the 1<sup>st</sup> Defendant was fraudulent, illegal, wrongful, null and void for all intents and purposes.
  - ii. A declaration that the 1<sup>st</sup> Defendant holds the title illegally, irregularly, unlawful and fraudulently.
  - iii. A declaration that the suit property known as Land Reference Number 27224 [L.R Number 164856/1] lawfully belongs to the Plaintiff.
  - iv. A declaration that the Plaintiff is entitled to ownership and possession of all that property known as Land Reference Number 27224 [L.R No. 164856/1].



- v. An order directing the 3<sup>rd</sup> Defendant to forfeit, cancel and revoke the transfer, the lease and the title to the suit property known land reference number 27224 (L.R Number 164856/1) issued in favour of the 1<sup>st</sup> Defendant.
  - vi. An order directing the Land Registrar to register the Plaintiff as the true owner of the suit property known Land Reference Number 27224 [L.R No. 164856/1] and to issue the Plaintiff with the Lease and Certificate of Lease of the said property.
  - vii. A permanent injunction restraining the Defendants whether by themselves or their agents and/or servants or otherwise from selling, transferring, disposing, charging or leasing or in any manner dealing with the suit property.
  - viii. A permanent injunction restraining the Defendants her agents or servants from entering, occupying using or in nay other manner, howsoever interfering with the plaintiffs use, enjoyment, occupation and ownership of the suit property or any part thereof.
  - ix. General damages
  - x. Interest on general damages at court rates.
  - xi. Costs of the suit plus interest thereon.
  - xii. In the alternative and without prejudice to the foregoing, damages equivalent to the Market Value of the property at the time of Judgment.
2. Upon being served with the Plaint and summons to enter appearance [STEA], the 1<sup>st</sup> Defendant duly entered appearance and thereafter filed a statement of Defence dated 23<sup>rd</sup> of July 2021, wherein the 1<sup>st</sup> Defendant denied the claims at the foot of the Plaint under reference.
  3. On the other hand, the 2<sup>nd</sup> Defendant duly entered appearance and filed a statement of Defence and wherein the 2<sup>nd</sup> Defendant also denied the claims by the Plaintiff. Moreover, the 2<sup>nd</sup> Defendant contended that the suit property was lawfully and duly allocated to and in favour of the 1<sup>st</sup> Defendant.
  4. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants also entered appearance and filed the statement of Defence dated 25<sup>th</sup> November 2020. The 3<sup>rd</sup> & 4<sup>th</sup> Defendants disputed the claim by the Plaintiff and indicated that the Plaintiff shall be invited to strict proof.
  5. The instant suit came up for case conference on various dates including 26<sup>th</sup> January 2022; whereupon the advocate[s] for the parties intimated to the court that the parties had filed all the requisite pleadings; list and bundle of documents and the witness statements. In this regard, the parties confirmed that the matter was thus ready for hearing.

### **Evidence by the Parties:**

#### **a. The Plaintiff's case**

6. The Plaintiff's case revolves around the evidence of five [5] witnesses, namely; Peter Githaka Mbugua, Margaret Gakonyo Mwangi, Solomon Ndibu Ngechu, Michael Kamau Kinga and Julius Kariuki Maina. Same testified as PW 1, PW 2, PW 3, PW 4 and PW 5, respectively and in that sequence.
7. PW1 [Peter Mbugua] testified that he is a director of the Plaintiff's company. Moreover, the witnesses [PW 1] averred that by virtue of being a director of the Plaintiff, same is therefore conversant with the facts of this case. In any event, the witness averred that same has been duly authorized and mandated by the Plaintiff to appear and prosecute the suit on behalf of the Plaintiff's company.



8. Furthermore, the witness averred that same has since recorded a witness statement in respect of the instant matter. To this end, the witness referenced the witness statement dated 1<sup>st</sup> October 2019 and which witness statement the witness sought to adopt and rely on.
9. Suffice to state that the witness statement dated 1<sup>st</sup> October 2019 was thereafter adopted and constituted as the evidence in chief of the witness.
10. Additionally, the witness referenced the list and bundle of documents dated 1<sup>st</sup> October 2019 containing Sixty six [66] documents and which documents the witness sought to tender and produce before the court. In the absence of any objection to the production of the named documents, the documents were tendered and produced before the court as Exhibits P1 – P66, respectively.
11. Other than the foregoing, the witness adverted to the Plaint dated 1<sup>st</sup> October 2019 and thereafter invited the court to grant the reliefs sought thereunder. In addition, the witness also referenced the Reply to the statement of Defence dated 18<sup>th</sup> August 2021.
12. On cross examination by learned counsel for the 1<sup>st</sup> Defendant, the witness [PW1] averred that the document at page 4 of the Plaintiffs list and bundle of documents is a Letter of allotment. Further, the witness averred that the Letter of allotment bears the name of Georgette Mumbua Musyoka.
13. While still under cross examination, the witness averred that the Plaintiff herein carried out and undertook due diligence before buying the suit property from Georgette Mumbua Musyoka. In any event, the witness averred that the Plaintiff company was represented by an advocate namely; Mr. Kamau Kinga. Nevertheless, the witness testified that even though the Plaintiff's transactional advocate undertook due diligence, the advocate did not generate and avail any report to the Plaintiff.
14. It was the further testimony of the witness that the Plaintiff purchased the suit property from the vendor, namely, Georgette Mumbua Musyoka. Besides the witness averred that the transaction was reduced into writing. However, the witness admitted that the sale agreement has neither been tendered nor produced before the court.
15. Other than the foregoing, it was the evidence of the witness that the Plaintiff company paid the sum of Kshs.1,200,000/= Only, as the purchase price. Nevertheless, the witness averred that same has not produced any evidence to show that the money was paid to the vendor.
16. The witness further testified that upon purchasing the suit property, the Plaintiff company entered upon and took possession of the suit property. Moreover, the witness averred that the Plaintiff herein thereafter proceeded to and erected a perimeter wall fence around the suit property. To this end the witness referenced the various photographs which were tendered and produced before the court as exhibits.
17. While under further cross examination, the witness averred that the Plaintiff herein also installed water into the premises. In any event, the witness added that upon the installation of water, the Plaintiff was being supplied with water bills, copies of which the witness tendered and produced before the court.
18. On further cross examination, the witness averred that the lease in favour of 1<sup>st</sup> Defendant was procured and obtained by collusion between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. In any event, the witness averred that the lease in question was purported to have been signed by the Mayor and the Town Clerk, yet at the time of the issues of the lease there was no city council of Nairobi.
19. Moreover, it was the testimony of the witness that the certificate of lease was also procured by fraud. In this regard, the witness testified that the certificate of lease was issued long before the Deed Plan



- was prepared. In particular, the witness averred that the fact that the lease pre-dated the Deed Plan demonstrates an illegality.
20. While still under cross examination, the witness averred that other than the Letter of allotment and the receipts on account of payment of ground rents; rates and water bill, the Plaintiff herein does not have any ownership documents before the court.
  21. It was the further testimony of the witness that it is the company who is in occupation of the suit property. Furthermore, the witness testified that the company has been in occupation of the suit property since 1995,
  22. Other than the foregoing, it was the testimony of the witness that the Plaintiff herein has not procured the Deed Plan; or any certificate of title in respect of the suit property.
  23. On cross examination by the learned counsel for the 2<sup>nd</sup> Defendant, the witness averred that the Plaintiff was not a direct allottee of the suit property. However, the witness clarified that the Plaintiff bought the land from Georgette Mumbua Musyoka, who was the allottee. Further and in any event, the witness averred that Georgette Mumbua duly complied with the terms of the Letter of allotment.
  24. While under a further cross examination, the witness averred that what constitutes the suit property hitherto belonged to the city council of Nairobi [now defunct]. In any event, the witness testified that it is the city council of Nairobi which allocated the suit property.
  25. On cross examination by learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, the witness [PW1] averred that the allocating authority was the city council of Nairobi. Besides, the witness stated that the Chief Land Registrar only facilitates the issuance of the certificate of lease. It was the further testimony of the witness that the Chief Land Registrar issued a fraudulent certificate of title to the 1<sup>st</sup> Defendant. However, the witness admitted that the Plaintiff has never been registered as the owner of the suit property.
  26. The 2<sup>nd</sup> witness who testified on behalf of the Plaintiff is Margaret Gakonyo Mwangi. Same testified as PW 2.
  27. It was the testimony of the witness [PW 2] that same is also a director of the Plaintiff's company. In this regard, the witness averred that same [PW2] is therefore conversant with the facts of the case. Moreover, the witness stated that same has since recorded a witness statement dated 26<sup>th</sup> September 2019.
  28. To this end, the witness sought to adopt and rely on the witness statement dated 26<sup>th</sup> September 2019. Instructively, the witness statement under reference was adopted and constituted as the evidence in chief of the Witness.
  29. Additionally, the witness averred that the Plaintiff herein has filed a Plaint dated the 1<sup>st</sup> October 2019. In this regard, the witness sought to adopt and rely on the contents of the Plaint.
  30. On cross examination by learned counsel for the 1<sup>st</sup> Defendant, the witness stated that the suit property was sold to the Plaintiff by one Georgette Mumbua Musyoka. However, the witness averred that same [PW2] did not participate/witness the sale of the suit property.
  31. It was the further testimony of the witness that same also did not meet and/or interact with the vendor. Nevertheless, the witness added that she [witness] is aware that the suit property was allocated to Georgette Mumbua. Furthermore, the witness testified that the Plaintiff entered into and executed a sale agreement with the vendor. However, the witness averred that the sale agreement got lost.



32. While under further cross examination, the witness averred that same did not see the sale agreement. At any rate, the witness added that the sale agreement was with the advocates and same got lost while at the offices of the advocate.
33. It was the further testimony of the witness that even though the sale agreement got lost same [witness] has never tried to authenticate the circumstances under which the sale agreement got lost.
34. On cross examination by the learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Defendant[s], the witness averred that the Plaintiff company bought the suit company from Georgette Mumbua Musyoka. In any event, the witness added that Georgette Mumbua Musyoka was the allottee of the land. Moreover, the witness testified that upon purchasing the suit property the Plaintiff became the owner of the land.
35. It was the further testimony of the witness that the city council of Nairobi [now defunct] has previously confirmed that the land belongs to the Plaintiff.
36. The 3<sup>rd</sup> witness who testified on behalf of the Plaintiff was Solomon Ndibu Ngechu. Same testified as PW 3.
37. It was the testimony of the witness that same is conversant with and knowledgeable of the facts of the case. Furthermore, the witness averred that same has since recorded a witness statement. To this end, the witness referenced his statement dated 5<sup>th</sup> November 2019 and which statement the witness sought to adopt and rely on as his evidence in chief.
38. Suffice to state that the witness statement dated 5<sup>th</sup> November 2019 was thereafter adopted and constituted as the evidence in chief of the witness.
39. On cross examination by the learned counsel for the 1<sup>st</sup> Defendant, the witness averred that same worked with the Plaintiff company between the year 1991 to 2000. The witness averred that his duties included handling cash transactions on behalf of the company.
40. It was the further evidence of the witness that the Plaintiff company bought/purchased the suit property from Georgette Mumbua. However, the witness clarified that same did not witness the sale of the land in question. While under further cross examination, the witness averred that he [Witness] was not the one who dealt with the payment of rates and related expenses to the city council of Nairobi. Moreover, the witness testified that same was not privy to the sale agreement.
41. It was the further testimony of the witness that same dealt with the building of the perimeter wall.
42. On cross examination by the learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, the witness averred that even though same was employed by the Plaintiff's company; same has not tendered a copy of his letter of appointment before the court.
43. It was the further testimony of the witness that same got to know of the purchase of the suit property from the director of the company. In particular, the witness averred that same got to know that the suit property was purchased from one Georgette Mumbua. Nevertheless, the witness testified that he was not privy to the buying of the suit property.
44. The fourth witness who testified on behalf of the Plaintiff was Michael Kamau Kinga. Same testified as PW 4.
45. It was the testimony of the witness that same is an advocate of the High Court of Kenya. Moreover, the witness averred that same has practiced law since the year 1983.



46. It was the further testimony of the witness that same witnessed a power of attorney that was donated by one Georgette Mumbua Musyoka. In particular the witness averred that Georgette Mumbua Musyoka was donating the power of attorney to Steel Products Limited, who is the Plaintiff herein. In particular, the witness averred that the power of attorney is dated 19<sup>th</sup> October 1995.
47. Moreover, the witness thereafter tendered and produced the Power of Attorney as exhibit before the court.
48. On cross examination by learned counsel for the 1<sup>st</sup> Defendant, the witness averred that same [Witness] has recorded a witness statement. In any event, the witness stated that same has alluded to and confirmed that he witnessed the power of attorney.
49. While still under cross examination, the witness averred that same is aware that the suit property previously belonged to the 2<sup>nd</sup> Defendant, namely, City Council of Nairobi [now defunct]. Furthermore, the witness averred that the suit property came from a larger plot which was sub-divided.
50. It was the further testimony of the witness that same acted for the Plaintiff in the sale transaction. However, the witness averred that the firm of M/s Kasanga Mulwa & Co. advocates acted for the vendor. Nevertheless, the witness conceded that same has not produced a copy of the sale agreement.
51. While still under cross examination, the witness averred that same only met Georgette Mumbua Musyoka when same [Georgette Mumbua Musyoka] was donating the power of attorney.
52. The witness further averred that same did not witness the execution of the sale agreement between Georgette Mumbua Musyoka and the Plaintiff herein. In any event, the witness averred that the sale agreement was prepared by the firm of M/s Kasanga Mulwa & Co. Advocates.
53. It was the further testimony of the witness that the 2<sup>nd</sup> Defendant did not have the capacity/authority to allocate the land to the 1<sup>st</sup> Defendant. Moreover, the witness testified that the land in question had already been allocated to Georgette Mumbua Musyoka.
54. It was the further testimony of the witness that Georgette Mumbua Musyoka was duly issued with a Letter of allotment. However, the witness added that a Letter of allotment does not strictly constitute title to land.
55. While still under cross examination, the witness averred that the Plaintiff herein has never been issued with the certificate of title. Nevertheless, the witness averred that it is the Plaintiff who is in occupation of the suit property.
56. The witness further testified that the transfer of the suit property to and in favour of the 1<sup>st</sup> Defendant was fraudulent. In any event, the witness added that the 2<sup>nd</sup> Defendant knew that the plot was under the occupation of the Plaintiff herein.
57. On cross examination by learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, the witness averred that same was only given instructions to draw the power of attorney. Nevertheless, the witness clarified that the power of attorney was given in favour of the Plaintiff. Furthermore, it was the evidence of the witness that the power of attorney was giving power to the Plaintiff to transfer the suit property in her [plaintiffs] favour.
58. On further cross examination, the witnesses averred that the power of attorney was intended to facilitate the Plaintiff to have the suit property transferred and registered in her [name].



59. On re-examination, the witness testified that the power of attorney reflects and shows the title number of the suit property. Nevertheless, the witness reiterated that the Plaintiff has not been issued with the certificate of title.
60. The 5<sup>th</sup> witness who testified on behalf of the Plaintiff was Julius Kariuki Maina. Same testified as PW 5.
61. It was the testimony of the witness [PW5] that same was previously engaged by the Plaintiff. Nevertheless, the witness averred that currently same is based in Iraq.
62. The witness further testified that as pertains to the instant matter same [witness] has since recorded a witness statement. In this regard, the witness sought to adopt and rely on the witness statement as his evidence in chief.
63. Suffice to state that the witness statement was duly constituted as the evidence in chief of the witness.
64. On cross examination by learned counsel for the 1<sup>st</sup> Defendant, the witness averred that same [witness] was employed by the Plaintiff. However, the witness admitted that same has not presented any evidence to demonstrate that same [Witness] was employed by the Plaintiff.
65. It was the further testimony of the witness that same was informed of the purchase of the suit property. Nevertheless, the witness clarified that he was not present at the time when the suit property was being purchased.
66. While under further cross examination, the witness averred that same was part of a team that constructed the perimeter wall. However, the witness testified that same did not know whether the other Fundis have been called to testify in this matter.
67. On cross examination by the learned counsel for the 2<sup>nd</sup> Defendant, the witness averred that the perimeter wall was constructed in the year 1999. Furthermore, the witness added that same got to know of the title number of the suit property because the plot number was contained in the Building Plans.
68. While still under cross examination, the witness averred that the perimeter wall was constructed/erected round the entire property.
69. On cross examination by learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, the witness averred that same was employed by the Plaintiff as a mason. At any rate, it was the testimony of the witness [PW5] that the perimeter wall was constructed in the year 1999.
70. With the foregoing testimony, the Plaintiff's case was closed.

**b. The 1<sup>st</sup> Defendant's case:**

71. The 1<sup>st</sup> Defendant's case is anchored on the evidence of one witness, namely, Grace Wairimu Gichu. Same testified as DW 1.
72. It was the testimony of the witness [DW 1] that same is the 1<sup>st</sup> Defendant herein. Moreover, the witness averred that by virtue of being the 1<sup>st</sup> Defendant, same [DW1] is conversant with the facts of the case.
73. Additionally, the witness averred that in respect of the instant matter, same [DW1] has since recorded and filed a witness statement. To this end, the witness alluded to the witness statement dated 23.7.2021 and which witness statement the witness sought to adopt and rely on as her evidence in chief. Instructively, the witness statement was thereafter adopted and constituted as her evidence in chief.



74. On the other hand, the witness referenced the List and bundle of documents dated 23.7.2021 containing fourteen [14] documents. Moreover, the witness sought to tender and produce the said document as exhibits before the court.
75. There being no objection to the production of the documents, same [Documents] were tendered and produced as Exhibits D1 to D14, respectively, on behalf of the 1<sup>st</sup> Defendant.
76. Furthermore, the witness adverted to the statement of Defence dated 23<sup>rd</sup> of July 2021 and thereafter sought to adopt and rely on same.
77. On cross examination by learned counsel for the 2<sup>nd</sup> Defendant, the witness averred that same was issued with a Letter of allotment and thereafter a Lease. In particular, the witness averred that the lease is dated 2<sup>nd</sup> February 2013. Nevertheless, the witness stated that the lease was executed and thereafter registered on 27<sup>th</sup> July 2015.
78. While still under cross examination, the witness averred that by the time the lease was issued, the City Council of Nairobi was still in existence. In addition, the witness averred that the office of the mayor and the town clerk of the city council of Nairobi were still in existence.
79. While still under cross examination, the witness averred that even though the lease was executed on 2<sup>nd</sup> February 2013, the lease took long before it was registered. However, the witness stated that same is not aware why the lease took long before it was registered.
80. On cross examination by the learned counsel for the Plaintiff, the witness testified that same is a business lady engaged in groceries. Furthermore, the witness averred that same started her business around the years 1989/1990.
81. It was the further testimony of the witness that she [Witness] was married in 1983. However, the witness stated that her husband passed on in the year 2014. Nevertheless, the witness was unable to recollect the date and the month of death of her late Husband.
82. It was the further testimony of the witness that same was issued with a Letter of allotment. In particular, the witness averred that the Letter of allotment was issued by the city council of Nairobi [now defunct].
83. While still under cross examination, the witness testified that the Letter of allotment was issued in her name. In any event, the witness clarified that the Letter of allotment was issued on 21<sup>st</sup> February 1992.
84. On further cross examination, the witness averred that the plot in question is located along Kangundo road, Dandora, within the City of Nairobi. Moreover, the witness added that the plot measures 0.4 ha or thereabouts.
85. It was the further testimony of the witness that the suit property has a structure standing thereon. Additionally, the witness added that the structure was constructed by her late husband.
86. It was the further testimony of the witness that same has produced and placed before the court a copy of the lease. Furthermore, the witness added that the purpose/use of the plot is shown as industrial.
87. It was the further testimony of the witness that upon being issued with the letter of allotment, same [Witness] proceeded to and made the requisite payment. To this end, the witness referenced the payment receipt issued in 1994. Besides the witness pointed out that the same has been paying land rates.



88. The witness testified that the letter of allotment issued in the name of Georgette Mumbua Musyoka is fake. However, when pressed further, the witness stated that same does not have any forensic document examination Report to confirm that the Letter of allotment is fake.
89. On the other hand, the witness averred that same is the one in position of the suit property. In any event, the witness testified that she entered the suit property immediately upon being issued with the letter of allotment.
90. Additionally, it was the testimony of the witness that same wrote to the City County Government of Nairobi vide letter dated 21<sup>st</sup> march 2018 and sought to confirm the ownership status of the suit property. In this respect, the witness averred that the City County Government confirmed that she is the owner of the suit property.
91. Other than the foregoing, the witness averred that same was issued with a Certificate of Lease over and in respect of the suit property. Besides, the witness also testified that she was also issued with a Deed Plan.
92. While under a further cross examination, the witness averred that even though same was issued with a Deed Plan same [Witness] does not know whether a Deed Plan should precede the issuance of the lease, or otherwise. However, the witness added that the Deed Plan was issued in 2015; whereas the lease is dated 2<sup>nd</sup> February 2013.
93. On further cross examination, the witness averred that the land in question is situated at Dandora and not Kayole. Furthermore, the witness reiterated that the suit property belongs to her.
94. Moreover, the witness testified that the Letter of allotment issued in favour of Georgette Mumbua Musyoka was issued on 24<sup>th</sup> September 1992. Furthermore, the witness averred that same [Witness] has seen a receipt stating that the allottee made payments in respect of the letter of allotment in 1994.
95. On the other hand, the witness averred that same [Witness] was issued with the letter of allotment on 21<sup>st</sup> February 1992. Besides, it was the testimony of the witness that same proceeded to and paid for the letter of allotment on the 21<sup>st</sup> October 1992.
96. While still under cross examination, the witness averred that she made various payments on account of ground rents and land rates. Furthermore, the witness averred that she has seen receipts showing that Georgette Mumbua Musyoka also made payments on account of ground rent and land rates.
97. On further cross examination, the witness testified that the suit property has a perimeter wall surrounding the same. In any event, it was the testimony of the witness that the perimeter wall was constructed by herself. Nevertheless, the witness added that she did not have any Building Plans.
98. It was the further testimony of the witness that prior to constructing the perimeter wall same [witness] applied to be allowed to construct the wall in the year 2016.
99. It was the further testimony of the witness that she has not been residing on the suit property. In any event, the witness added that she is not aware whether water has been connected to the suit property.
100. Regarding a water bill which was shown to her, the witness stated that the water bill relates to the year 2006. Furthermore, the witness averred that the water bill is in the respect of the plot situated at Dandora. Besides, the witness confirmed that the water bill is in the name of the Plaintiff.
101. On cross examination by learned counsel for the 2<sup>nd</sup> Defendant, the witness testified that same is the owner of the suit plot. In any event, the witness stated that she was issued with a Letter of allotment by the 2<sup>nd</sup> Defendant. Thereafter the witness averred that the 2<sup>nd</sup> Defendant processed and issued a lease.



102. It was the testimony of the witness that the lease under reference was issued in the year 2013. Nevertheless, the witness added that the lease was ultimately registered in the year 2015.
103. Regarding why the lease took more than 2 years before same was registered, the witness stated that she did not have any reason for the delay. Nevertheless, the witness stated that the questions of registration are dealt with the office of the Chief Land Registrar.
104. While under cross examination, the witness averred that upon being issued with a letter of allotment same [witness] paid the stand premium on 21<sup>st</sup> February 1992.
105. On re-examination, the witness averred that she made an application for allotment of the land in the year 1992. Moreover, the witness averred that thereafter same [witness] was issued with a letter of allotment dated 21<sup>st</sup> February 1992.
106. It was the further testimony of the witness that upon being issued with the letter of allotment, same [Witness] proceeded to and paid the stamp premium. In this regard, the witness averred that she was issued with a revenue receipt.
107. Regarding whether the office of the mayor and the town clerk were in existence in February 2013, the witness confirmed that the offices were still in existence. Furthermore, the witness stated that the lease was regularly issued and signed on behalf of the city council of Nairobi [now defunct].
108. In respect, of the letter of allotment issued in favour of Goergette Mumbua Musyoka, the witness averred that the letter of allotment in question was issued in September 1992. Nevertheless, the witness averred that the letter of allotment in question came later than the letter of allotment in her favour.
109. It was the further testimony of the witness that same is aware that some investigations were carried out and undertaken over the legality of the letter of allotment in the name of Georgette Mumbua Musyoka. Nevertheless, the witness averred that same [Witness] has not tendered the report of the investigations.
110. Other than the foregoing, the witness averred that same wrote to the County Government of Nairobi [the Second Defendant herein] to ascertain the ownership status of the suit property. In this regard, the witness added that the City County Government confirmed that the plot lawfully belongs to her [witness].
111. Finally, the witness averred that after complying with the terms of the letter of allotment same [witness] was issued with a lease and thereafter a certificate of lease. In this regard, the witness testified that same [witness] is the lawful owner of the suit property.
112. With the foregoing testimony, the 1<sup>st</sup> Defendant case was closed.

**c. 2<sup>nd</sup> Defendant's case**

113. The 2<sup>nd</sup> Defendant's case is premised on the evidence of one witness, namely, Isaac Wanyoike. Same testified as DW2.
114. It was the testimony of the witness [DW2] that same is an employee of the City County Government of Nairobi. Moreover, the witness averred that previously same worked with the City Council of Nairobi, [now defunct].
115. Additionally, the witness averred that by virtue of his portfolio with the 2<sup>nd</sup> Defendant [City County Government of Nairobi], same is conversant with the facts of this matter. Furthermore, the witness averred that same has since recorded a witness statement dated 16<sup>th</sup> August 2021; and which witness statement the witness sought to adopt and rely on as his evidence in chief.



116. Instructively, the witness statement dated 16<sup>th</sup> August 2021 was duly admitted and constituted as the evidence in chief of the witness.
117. On the other hand, the witness averred that the City County Government of Nairobi has records pertaining to and concerning the suit property. In any event, the witness averred that the 2<sup>nd</sup> Defendant has since filed a List and Bundle of Documents dated 16<sup>th</sup> August 2021 containing four [4] documents. In the absence of any objection to the production of the documents, same [Documents] were duly tendered and produced as exhibits D1-D4 on behalf of the 2<sup>nd</sup> Defendant.
118. It was the further testimony of the witness that the suit property was duly and lawfully allocated to the 1<sup>st</sup> Defendant herein. To this end, the witness testified that the suit property belongs to the 1<sup>st</sup> Defendant.
119. On cross-examination by learned counsel for the 1<sup>st</sup> Defendant, the witness averred that the 1<sup>st</sup> Defendant was duly allocated the suit property. In this regard, the witness referenced the Letter of allotment in favour of the 1<sup>st</sup> Defendant.
120. While under further cross-examination, the witness averred that same has also seen another letter of allotment bearing the name of Georgette Mumbua Musyoka. Nevertheless, the witness averred that the letter of allotment bearing the name of Georgette Mumbua Musyoka is not traceable to the records of the 2<sup>nd</sup> Defendant.
121. It was the further testimony of the witness that the 1<sup>st</sup> Defendant was also issued with a lease. In this regard, the witness referenced the lease tendered by the 1<sup>st</sup> Defendant and which is dated 2<sup>nd</sup> February 2013. Furthermore, the witness averred that the lease in favour of the 1<sup>st</sup> Defendant was lawfully issued by the City Council of Nairobi [now defunct].
122. In addition, it was the testimony of the witness that the lease in favour of the 1<sup>st</sup> Defendant was subsequently registered and the 1<sup>st</sup> Defendant was duly issued with a Certificate of Lease.
123. The witness further testified that the 1<sup>st</sup> Defendant herein has been paying rates to and in favour of the City County Government of Nairobi. Besides, the witness also confirmed that the 1<sup>st</sup> Defendant paid the standard premium at the foot of the letter of allotment.
124. Regarding a letter dated 21<sup>st</sup> March 2018, the witness stated that the letter was written by the 1<sup>st</sup> Defendant and same sought to enquire from the 2<sup>nd</sup> Defendant the status of ownership of the suit property. Furthermore, the witness averred that the 2<sup>nd</sup> Defendant received the letter under reference and thereafter responded to same vide letter dated 6<sup>th</sup> April 2018.
125. It was the testimony of the witness that the 1<sup>st</sup> Defendant formally applied for the allotment of the suit property. The witness added that upon receipt of the application for allotment, the City Council of Nairobi duly processed and thereafter issued the letter of allotment.
126. While under further cross-examination, the witness averred that same has seen the letter of allotment propagated by the Plaintiff herein. However, the witness clarified that he [Witness] has never seen any such letter of allotment in the records of the 2<sup>nd</sup> Defendant.
127. Referred to the document at page 77 of the Plaintiff's Bundle of Documents, the witness averred that the document is a letter written by one Cecilia Koigu. Furthermore, the witness averred that Cecilia Koigu who is the author of the letter is the Chief Officer-Lands at the City County Government of Nairobi.



128. It was the further testimony of the witness that vide the letter under reference, Cecilia Koigu confirmed that the suit property belongs to and is registered in the name of the 1<sup>st</sup> Defendant. In addition, the witness averred that the letter in question also confirmed that a Part Development Plan [PDP] was duly prepared in respect of the suit property.
129. On further cross-examination, the witness averred that ownership of land depends on the validity of the letter of allotment. Nevertheless, the witness averred that payment of water bill does not confer any ownership rights to land. The witness thereafter added that even payment of electricity bills does not confer ownership rights to land.
130. It was the further testimony of the witness that same has given evidence on behalf of the County Government of Nairobi. At any rate, the witness averred that his testimony is predicated on the basis of the records and documents held by the City County Government of Nairobi.
131. On cross-examination by learned counsel for the Plaintiff, the witness averred that same is an employee of the City County Government of Nairobi. In addition, the witness confirmed that he is a permanent employee.
132. Moreover, it was the testimony of the witness that same is conversant with the process of allotment of land. In particular, the witness confirmed that the land in question was previously part of a larger parcel of land which fell within a site and service scheme.
133. Furthermore, the witness averred that prior to and before allotment of land, the relevant department of physical planning is obligated to prepare and generate a Part Development Plan. In this regard, the witness testified that a Part Development Plan was duly prepared.
134. While still under cross-examination, the witness averred that the documents attesting to and confirming ownership of plots can also be found at the rates department of the City County Government of Nairobi. In addition, the witness averred that same was able to check the records relating to the suit property. In particular, the witness averred that the records confirm that the suit property was allocated to the 1<sup>st</sup> Defendant.
135. It was the further testimony of the witness that the 2<sup>nd</sup> Defendant received a letter from the Plaintiff herein. The witness added that the letter which was received from the Plaintiff was a complaint touching on and concerning ownership of the suit property. In this regard, the witness referenced the letter at page 75 of the Plaintiff's Bundle of Documents.
136. It was the further testimony of the witness that upon receipt of the letter from the Plaintiff, the 2<sup>nd</sup> Defendant responded to same. In particular, the witness averred that the letter from the Plaintiff was responded to by Cecilia Koigu who is the Chief Officer-Lands at the City Government of Nairobi.
137. The witness testified that upon an allottee being allotted a plot, the allottee is called upon to pay the standard premium and the various statutory levies. In addition, the witness averred that upon payment of the standard premium, the allocating authority, in this case, the City County Government of Nairobi, is called upon to facilitate survey and thereafter the issuance of the beacon certificate.
138. While still under cross-examination, the witness averred that even though the lease in favour of the 1<sup>st</sup> Defendant was issued in 2013, the Deed Plan is indicated to have been issued in 2015. However, the witness clarified that the issuance of the Deed Plan subsequent to the preparation of the lease does not invalidate the lease.



139. It was the further testimony of the witness that the City County Government of Nairobi is mandated to authorise change of user. However, the witness added that before a change of user can be effected, the registered owner of the land is obligated to make the requisite application.
140. On further cross-examination, the witness stated that the lease in favour of the 1<sup>st</sup> Defendant was prepared by the Legal Department of the City Council of Nairobi. Thereafter, the witness averred that the lease was executed by the mayor and the Town Clerk, respectively.
141. It was the further testimony of the witness that by the time the lease was prepared and executed, the office[s] of the Mayor and the Town Clerk were still in existence. In particular, the witness averred that the County Governments had not taken effect by February 2013.
142. It was the further testimony of the witness that the lease in favour of the 1<sup>st</sup> Defendant was duly executed and that same [lease] is valid. Besides, the witness averred that the 1<sup>st</sup> Defendant also made the payments on account of the standard premium. Furthermore, the witness averred that the 1<sup>st</sup> Defendant has also been paying the land rates from the date of registration of the suit property in her name.
143. It was the further testimony of the witness that the 1<sup>st</sup> Defendant is the rateable owner of the property. In this regard, the witness clarified that the documents obtaining at the rates department bear/reflect the name of the 1<sup>st</sup> Defendant.
144. While still under cross-examination, the witness averred that the 1<sup>st</sup> Defendant made various payments to the 2<sup>nd</sup> Defendant on account of rates. Nevertheless, the witness averred that same has not tendered and/or produced the clearance certificate before the court.
145. It was the further testimony of the witness that the Plaintiff herein also made various payments in respect of the suit property. The witness added that the payments by the Plaintiff were duly receipted. However, the witness clarified that the receipts were in the name of Georgette Mumbua Musyoka.
146. Moreover, it was the testimony of the witness that the letter of complaint by the Plaintiff herein was duly received by the 2<sup>nd</sup> Defendant. In particular, the witness referenced the letter dated 22<sup>nd</sup> June 2017. The witness further added that the 2<sup>nd</sup> Defendant responded to the Plaintiff's letter of complaint. In any event, the witness averred that the 2<sup>nd</sup> Defendant confirmed that the suit property belongs to the 1<sup>st</sup> Defendant.
147. On further cross-examination by the Plaintiff's counsel, the witness averred that same is not privy to or knowledgeable of the person in occupation of the suit property. In particular, the witness averred that same is not aware whether the suit property is under the occupation of the Plaintiff.
148. Regarding the validity of the letter of allotment that was produced by the Plaintiff, the witness averred that the letter in question does not obtain at the records of the 2<sup>nd</sup> Defendant. On the contrary, the witness affirmed that the 1<sup>st</sup> Defendant's letter of allotment is traceable to the records of the 2<sup>nd</sup> Defendant.
149. Regarding the delay attendant to the registration of the lease in favour of the 1<sup>st</sup> Defendant, the witness averred that the delay coincided with the taking over of the functions of the local authorities, namely, City Council of Nairobi by the City County Government of Nairobi.
150. While under further cross-examination, the witness testified that a water bill cannot confirm ownership of land. In particular, the witness averred that the Plaintiff herein has neither procured nor been issued with a lease or a Certificate of Lease in respect of the suit property.



151. With the foregoing testimony, the 2<sup>nd</sup> Defendant's case was closed.

**d. The Parties' Submissions:**

152. At the close of the hearing of the suit, the advocates for the respective parties sought time to file and exchange their written submissions. In this regard, the court acceded to the request and thereafter circumscribed the timelines for the filing and exchange of the written submissions.

153. Fast forward, the Plaintiff filed written submissions dated 10<sup>th</sup> December 2024; whereas the 1<sup>st</sup> Defendant filed written submissions dated 29<sup>th</sup> November 2024. Moreover, the 2<sup>nd</sup> Defendant filed written submissions dated 2<sup>nd</sup> December 2024.

154. Suffice it to state that the three [3] sets of written submissions [details in terms of the preceding paragraphs] form part of the record of the court. In addition, the contents of the written submissions shall be adopted and deployed in determining the issues in dispute.

155. Other than the foregoing, it is worthy to state that even though the court has neither reproduced nor reharshed the submissions filed by the respective parties, the contents of same have however greatly assisted the court. Furthermore, the court is indebted to the parties for the elaborate and comprehensive submissions filed.

**Issues for Determination:**

156. Having reviewed the pleadings filed by the parties; the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed on behalf of the parties, the following issues crystallise [emerge] and are thus worthy of determination:

- i. Whether the Plaintiff's suit is competent and valid on the face of the provisions of Order 4 Rule 1 (2) of the Civil Procedure Rules 2010, or otherwise;
- ii. Whether the Plaintiff has demonstrated and proved legitimate rights to and interests over the suit property or otherwise;
- iii. Whether the 1<sup>st</sup> Defendant has any ownership rights to and in respect of the suit property of otherwise; and
- iv. What reliefs, if any, ought to be granted.

**Analysis and Determination**

**Issue one**

**Whether the Plaintiff's suit is competent and valid on the face of the provisions of Order 4 Rule 1 (2) of the Civil Procedure Rules 2010, or otherwise;**

157. The suit beforehand was commenced vide Plaint dated 1<sup>st</sup> October 2019 and which Plaint was accompanied by a Verifying Affidavit [sic] sworn by Peter Gitaka Mbugua. On the face of the Verifying Affidavit, it shows that it was taken/made at Nairobi on 1<sup>st</sup> October 2019. For good measure, the Verifying Affidavit is duly executed/signed by the deponent.

158. Nevertheless, it is worthy to state and reiterate that despite the Verifying Affidavit having been executed by the deponent, same [Verifying Affidavit] was never submitted to a commissioner of oaths for purposes of commissioning in accordance with the provisions of Sections 4 and 5 of the [Oaths and Statutory Declarations Act](#), Chapter 15 Laws of Kenya.



159. Suffice it to state, that an affidavit can only be referenced as an affidavit in strict sense [strictu sensu] when same has been duly commissioned or notarised. However, in the instant case, the Verifying Affidavit was neither commissioned nor notarised.
160. Before venturing to address the legal implications attendant to the failure to commission/notarise an affidavit/statutory declaration, it is imperative to reproduce the provisions of Sections 4 and 5 of the Oaths and Statutory Declaration Act, Chapter 15, Laws of Kenya.
161. The said provisions state/ provide as hereunder:
4. Powers of commissioner for oaths.
    - (1) A commissioner for oaths may, by virtue of his commission, in any part of Kenya, administer any oath or take any affidavit for the purpose of any court or matter in Kenya, including matters ecclesiastical and matters relating to the registration of any instrument, whether under an Act or otherwise, and take any bail or recognizance in or for the purpose of any civil proceeding in the High Court or any subordinate court:

Provided that a commissioner for oaths shall not exercise any of the powers given by this section in any proceeding or matter in which he is the advocate for any of the parties to the proceeding or concerned in the matter, or clerk to any such advocate, or in which he is interested.
    - (2) A commissioner for oaths shall, in the exercise of any of the powers mentioned in subsection (1), be entitled to charge and be paid such fees as may be authorized by any rules of court for the time being.
  5. Particulars to be stated in jurat or attestation clause

Every commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.
162. The named provisions of the Oaths and statutory Declaration Act [supra], leaves no doubt that every affidavit or statutory declaration must be duly commissioned. For good measure, the commissioner for oaths must emboss/affix the requisite seal in the jurat and thereafter execute the affidavit by signing same.
163. Suffice it to state that in the absence of the signature of the commissioner for oaths and the requisite seal, any documents that purports to be an affidavit/statutory declaration is invalid.
164. Moreover, the importance of affixation of the seal of the commissioner for oaths and the necessity to comply with the provisions of Section 5 of the [Oaths and Statutory Declarations Act](#) has also received judicial pronouncement[s] in a plethora of case[s]/ decision[s].
165. In the case of *Konchellah v Sunkuli & 2 others* (Civil Application 26 of 2018) [2018] KESC 58 (KLR) (7 September 2018) (Ruling), the Supreme Court of Kenya [ the apex Court] stated thus:



7. The making of affidavits is governed by the *Oaths and Statutory Declarations Act*, Cap 15 Laws of Kenya. Section 5 of the Act provides, thus:

“Every commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.”

Further, Section 8 states:

“A magistrate or commissioner for oaths may take the declaration of any person voluntarily making and subscribing it before him in the form in the Schedule.”

Hence, an affidavit must clearly state the place and date where it was made and it must be made before a Magistrate or a Commissioner for oaths.

8. We have no hesitation in finding that the purported Replying Affidavit filed by the 1<sup>st</sup> Respondent is fatally defective as the same contravenes all the legal requirements for the making of an affidavit. Hence it has no legal value in the matter before us. We have checked all the eight copies of the Replying Affidavit as filed in the Court Registry and confirmed that none of the copies was signed, commissioned and dated. Consequently, as the same is defective, it is deemed that there is no Replying Affidavit on record filed by the 1<sup>st</sup> Respondent.
166. To the extent that the Verifying Affidavit accompanying the Plaint beforehand is not duly commissioned, there is no gainsaying that the impugned Verifying Affidavit is void and invalid. In this regard, same does not satisfy the statutory threshold envisaged under the law.
167. Arising from the foregoing, I have no difficulty in finding and holding that the impugned Verifying Affidavit courts striking out. Consequently, and in this regard, the impugned Verifying Affidavit be and is hereby struck out and expunged from the record of the court.
168. Having struck out and expunged the impugned Verifying Affidavit, the Plaint commencing the instant suit is left bare and devoid of the requisite verifying affidavit. In this regard, it is common ground that the Plaint beforehand does not meet the statutory threshold espoused vide the provisions of Order 4 Rule 1 (2) of the Civil Procedure Rules 2010.
169. The question that does arise and which the court must grapple with is whether a Plaint that is not accompanied by the requisite verifying affidavit can and ought to be sustained. In my humble view, the verifying affidavit constitutes a critical component in the eyes of the law. Further and at any rate, it is the verifying affidavit that verifies the correctness or otherwise of the contents of the Plaint.
170. In the absence of a compliant verifying affidavit, there is no gainsaying that the suit is rendered invalid. Even though a party who has not filed the requisite verifying affidavit is at liberty to apply for leave to regularise the scenario, I beg to state that no such application was ever made in respect of the instant matter.
171. Moreover, it is not lost on this court that this pertinent issue has arisen and come to the attention of the court at the tail end of the proceedings. In this regard, it suffices to state that horse has already bolted and no remedial action can be taken by and at the instance of the Plaintiff to redeem/remedy the situation.
172. In the absence of the requisite verifying affidavit, the Plaint beforehand and by extension the entire suit, are vitiated. In this regard, I encounter no difficulty in returning a verdict that the suit is incompetent and must equally be struck out.



173. To this end, it is imperative to adopt and reiterate the holding of the Court of Appeal in the case of *Research International East Africa Ltd V Julius Arisi & 213 Others* [2007] KECA 506 (KLR) where the court stated thus:

In our view, the true construction of rule 1 (2) of Order VII Civil Procedure Rules is that even in cases where there are numerous plaintiffs, each plaintiff is required to verify the correctness of the averments by a verifying affidavit unless and until he expressly authorizes any of the co-plaintiffs or some of them in writing, and, files such authority in the case, to file a verifying affidavit on his behalf in which case such a verifying affidavit would be sufficient compliance with the rule. Moreover, the Grace Ndegwa's case (*supra*) and rule 12(1) of Order I CP Rules leave no doubt that one or more of the co-plaintiffs can validly file an affidavit verifying the correctness of the averments of the plaint on behalf of the other co-plaintiffs with their authority in writing.

Having come to the conclusion that the verifying affidavit of Julius Arisi was filed without authority of the other 213 plaintiffs, it follows that the other 213 respondents have not complied with mandatory provisions of rule 1 (2) of Order VII Civil Procedure Rules and that their suit was liable to be struck out by the superior court under rule 1 (3) of Order VII CP Rules.

174. Other than the question of the verifying affidavit that was not commissioned in accordance with the law, there is yet another aspect/perspective of the matter which invalidates the Plaintiff's suit. Instructively, the Plaintiff's claim touches on and concerns disposition of an interest in land. In this regard, it behooved the Plaintiff to place before the court a sale agreement and/or memorandum in writing evidencing the sale transaction.

175. I am aware that the provisions of Section 3 (3) of the *Law of Contract Act*, Chapter 23, Laws of Kenya was effectively amended and came into place in 2003. Nevertheless, there is no gainsaying that even before the amendment, Section 3 of the *Law of Contract Act* stipulated that a disposition of an interest in land ought to be evidenced in writing.

176. Notwithstanding the foregoing, it is appropriate to recall that the Plaintiff herein neither tendered nor produced before the court any sale agreement and/or memorandum in writing to evidence the sale transaction. For good measure, the only document which was tendered and produced was a general power of attorney which was reported to have been donated by Georgette Mumbua Musyoka to and in favour of the Plaintiff.

177. However, it is not lost on this court that the power of attorney speaks to a specific issue. It mandates the donee [in this case, the Plaintiff] to undertake the designated assignment for and on behalf of the donor.

178. Without belabouring the point, I beg to underscore that the Plaintiff's claim, which essentially concerns the disposition of an interest in land and declaration of ownership, is founded in vacuum.

179. The foregoing observation aside, my answer to issue number one [1] is to the effect that the suit beforehand was/is incompetent. In this regard, the suit cannot be redeemed and must suffer the prescription provided for under the law.

180. On the basis of the foregoing finding, it would have been apposite to terminate the judgement and rest the matter. Nevertheless, I am aware that this is not the final court and hence it behoves me to venture forward and address the merits of the case.

181. Consequently, I propose to do as much in the subsequent paragraphs.



## Issue Number Two:

### **Whether the Plaintiff has demonstrated and proved legitimate rights to and interests over the suit property or otherwise**

182. The Plaintiff's case as pertains to the claim in respect of the suit property is premised and anchored on the fact that the Plaintiff entered into a sale agreement with one Georgette Mumbua Musyoka and wherein Georgette Mumbua Musyoka [hereinafter referred to as the Vendor] sold to the Plaintiff the suit property on the basis of a letter of allotment dated 24<sup>th</sup> September 1992.
183. It was the testimony of PW1 [Peter Githaka Mbugua] that the Plaintiff entered into a sale agreement with the vendor. The witness further testified that the sale agreement was reduced into writing. Nevertheless, the witness averred that the sale agreement got lost and hence same could not be tendered and produced before the court.
184. Additionally, the witness averred that the Plaintiff company paid the purchase price of KShs. 1,200,000 only. However, the witness clarified that by the time the suit property was being sold to the Plaintiff company, the vendor had neither procured nor obtained the lease nor the certificate of lease in respect of the suit property.
185. Moreover, it was the evidence of PW1 that the Plaintiff company has neither procured nor obtained any ownership documents in respect of the suit property. In particular, PW1 admitted and acknowledged that the Plaintiff does not have any certificate of title over the suit property.
186. To appreciate the substratum of the evidence tendered by and on behalf of the Plaintiff, it is appropriate to reproduce pertinent aspects of the evidence of PW1 while under cross-examination by learned counsel for the 1<sup>st</sup> Defendant.
187. PW1 stated thus:
- “ The Plaintiff company does not have any ownership documents before the court.”
188. While under further cross-examination by learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, PW1 stated as hereunder:
- “ The company has not been registered as the owner of the land. The company doesn't have any title documents as of to date.
189. From the totality of the evidence on record, what becomes apparent is that the Plaintiff and the vendor underpinned their transaction on the basis of the letter of allotment dated 24<sup>th</sup> September 1992. In this regard, the question that the court must investigate and interrogate is whether a letter of allotment which has not birthed a certificate of title can found the basis of any transaction transferring an interest in land.
190. It is common ground and case law abound that title to land only comes into fruition when an allottee has complied with the terms of the letter of allotment and thereafter a certificate of title issued. Pertinently, before a certificate of title is issued, the allottee holds no legal rights capable of being transferred.
191. The Supreme Court of Kenya [the apex Court] espoused the legal principle pertaining to whether a letter of allotment can found and/or anchor any legal interest in land in the case of *Torino Enterprises Limited v The Attorney General* [2023] KESC, where the court stated thus:



57. The respondent also challenged the letter of allotment on grounds that at the time of its transfer, the conditional thirty (30) days acceptance period had lapsed. As it turned out, the letter was also silent on whose behalf the commissioner of lands had made the allotment. Noting that the Commissioner of Lands by an allotment letter dated December 19, 1999 purported to allocate the suit property to Renton Company Limited. Thereafter, by a letter dated April 25, 2001, Renton Company Limited sought approval from the Commissioner of Lands to transfer the same to the appellant. The appellant's ownership is traced back to this allotment Letter even if subsequently registered under the Registration of Titles Act cap 281 (Repealed) on April 26, 2001.
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].
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.
192. From the dictum of the Supreme Court highlighted in the preceding paragraphs, there is no gainsaying that the transaction that was entered into between the Plaintiff and the Vendor, was incapable of vesting/conferring any legal rights and/or interests over the suit property to the Plaintiff.
193. By parity of reasoning, it then means that the Plaintiff herein acquired no legitimate rights and/or interests over the suit property that is capable of being canvassed before and/or vindicated by the court.
194. The second perspective that merits consideration is whether the Plaintiff herein whose claim to ownership of the suit property is based on, namely, letter of allotment dated 24<sup>th</sup> September 1992, Revenue Receipt dated 24<sup>th</sup> September 1992; Beacon Certificate; Power of Attorney; Water and Electricity Bills can be declared as the owner of the suit property.
195. To start with, a claim to and in respect of ownership of land can only accrue upon the ultimate issuance of title. Suffice it to state that it is the certificate of title duly issued in accordance with the law that vests and confers upon the holder thereof rights over the land in question.



196. The foregoing position was espoused and amplified in the case of *Wreck Motor Enterprises v Commissioner of Lands & 3 others* [1997] eKLR where the Court of Appeal stated as hereunder:

Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held.

197. Likewise, the court also addressed the same situation in the case of *Dr. Joseph N.K. Arap Ng'ok v Justice Moiyo ole Keiwua & 4 Others*, Civil Application No. NAI.60 of 1997 [1997] eKLR: where the Court of Appeal stated 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.

198. Yet again, I come to the conclusion that the nature and kind of documents which are being espoused and relied upon by the Plaintiff herein are incapable of vesting any title to and in favour of the Plaintiff.

199. Simply put, the pieces of paper[s] being referenced by the Plaintiff are not recognised under the law as far as title to land is concerned.

200. The third perspective that also merits mention and a short discussion relates to the fact that the letter of allotment that was issued to the Vendor was issued on 24<sup>th</sup> September 1992. However, by the time the said letter of allotment was being issued there was in existence another letter of allotment in favour of the 1<sup>st</sup> Defendant. Notably, the letter of allotment in favour of the 1<sup>st</sup> Defendant and which letter was vindicated by DW2 was issued on 21<sup>st</sup> February 1992.

201. It is therefore evident that by the time the vendor [*Georgette Mumbua Musyoka*] was allegedly being issued with the letter of allotment dated 24<sup>th</sup> September 1992; the property under reference stood alienated. For good measure, the property under referenced anchored another previous letter of allotment.

202. Arising from the foregoing, it is therefore important to point out and underscore that the land in question was already alienated. In this regard, the letter of allotment being propagated by the Plaintiff constituted a paper transaction. In any event, it attached to no land.

203. Without belabouring the point, I beg to cite and reference the decision of the Court of Appeal in *Benja Properties Limited v Syedna Mohammed Burhannudin Sahed & 4 others* [2015] eKLR where the court held thus:

In arriving at our decision, we note that an interest in land cannot be allotted, alienated or transferred when the specific parcel of land allotted is not in existence. Allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land. In the instant case, the allotment by the Commissioner of Land to the original allottees did not attach in rem to any land since there was no parcel upon which the allotment could attach. What the 5<sup>th</sup> respondent, the appellant and the original allottees did was to engage in paper transactions without a parcel of land upon which any interest in land would attach and vest – it was paper transactions without any parcel of land as its substratum.

204. The fourth perspective that equally merits mentioning relates to the question whether the letter of allotment dated 24<sup>th</sup> September 1992 was duly accepted by the Vendor. Similarly, the incidental question is whether the requisite payments were made within the prescribed timelines.



205. It is imperative to state that PW1 tendered and produced a revenue receipt dated 24<sup>th</sup> September 1992. Notably, the date of 24<sup>th</sup> September 1992 is handwritten. However, the receipt in question contains very strict instructions which read as hereunder:

“Only the commission printed receipt below will be recognised.”

206. The printed receipt that is alluded to beneath shows that the impugned payments were captured to have been made on 21<sup>st</sup> October 1994. The amount that was [sic] paid was KShs. 55,000/-.

207. From the foregoing, it is evident that the purported payment was being made well outside the stipulated 30 days period. In this regard, even if the letter of allotment was legal [which is not the case], same lapsed before the terms thereof were complied with.

208. To buttress the legal exposition in the preceding paragraph, I beg to adopt and reiterate the decision in the case of Joseph Kamau Muhoro v Attorney General & Ministry of Interior and Coordination of National Government [2021] KEELC 1457 (KLR) where this court considered the legal implication of failure to comply with the terms of the letter of allotment within the prescribed timeline[s].

209. For coherence, the court stated thus:

33. In my humble view, by the time the Plaintiff/Applicant herein, was purporting to pay the stand premium and the annual rent, which were mandatory conditions to the letter of Allotment, the allotment in question was already extinguished and was thus incapable of attracting any payment and/or being activated whatsoever.

34. Besides, I also hold the humble opinion that having not formally accepted the Letter of Allotment, [in writing as required], the Letter of Allotment, on which the Plaintiff/Applicant has premised his claim, was rendered void and non-existent.

35. In support of the foregoing holdings, it is important to take cognizance of the Decision in the case of Dr. Syedna Mohammed Burhannuddin Saheb & 2 others vs Benja Properties & 2 others [2007] eKLR;

“ In any event, the letter of allotment relied upon by the Defendant had itself expired, and was therefore invalid. I do not accept Mr. Kirundi, Counsel for Defendant’s argument, that the expired letter, when acted upon, had been “revived” through conduct. The letter had expired. It was dead. There was nothing to “revive”.

210. The fifth perspective that also arises and deserves my attention relates to the fact that the letter of allotment dated 24<sup>th</sup> September 1992 was neither traceable to nor obtainable at records of the City County Government of Nairobi. Instructively, it is the City Council of Nairobi [now defunct] which is stated to have issued the letter of allotment.

211. In this regard, if the letter of allotment was truly issued by the said authority, then same ought and should have formed part of the record of the 2<sup>nd</sup> Defendant [City County Government of Nairobi].

212. Be that as it may, it is worthy to recall that DW2 testified and stated that the letter of allotment being referenced and relied upon by the Plaintiff did not form part of the record of the 2<sup>nd</sup> Defendant.

213. Surely, if the letter of allotment under reference is not part of the record of the lessor [City County Government of Nairobi] then something does not add up.



214. Pertinently, it is important to reproduce the salient bits [excerpts] of the evidence of DW2 relative to the perspective under reference.

215. Same stated as hereunder:

“I wish to add that Nairobi City Council is the predecessor of Nairobi City County Government. I also do confirm that I have seen another letter of allotment. The other letter of allotment is in the name of Georgette Mumbua Musyoka. However, I wish to state that the letter of allotment herein is not traceable in our records.”

216. On the other hand, it is not lost on this court that the Plaintiff herein, who contended that the letter of allotment in favour of Georgette Mumbua Musyoka was lawful did not summon and/or call any witness from the City County Government. In my humble view, one would have expected the Plaintiff to go the extra mile in an endeavour to prove the validity of the impugned letter of allotment.

217. To my mind, the failure by the Plaintiff to call a witness from the County Government of Nairobi to vindicate its claim to the suit property negated proof of the Plaintiff’s claim.

218. In this respect, I find succour in the decision of the Court of Appeal in the case of Philemon L. Wambia v Gaitano Lusitsa Mukofu, Attorney General & Settlement Fund Trustees [2019] KECA 157 (KLR) where the court stated as hereunder:

40. The appellant further testified that he was given the letter of allotment from the Nairobi office of the SFT. The SFT witness testified that letters of allotment are issued at the Land Adjudication and Settlement Office located in the District where the settlement scheme is found. It is not in dispute that the appellant did not obtain his letter of allotment from the lands office in Trans Nzoia. The authenticity of the appellant’s letter of allotment is therefore in issue. The legal adage is that he who alleges must prove. In this matter, the appellant has not tendered any evidence to support the counterclaim that his letter of allotment is genuine. When the authenticity and genuineness of the appellant’s letter of allotment was raised, it was incumbent upon the appellant to prove the genuineness of his letter of allotment. As the trial court correctly stated, the appellant ought to have called a witness from the Nairobi Lands Office where he claimed he obtained the letter of allotment. Failure on the part of the appellant to call a witness from the lands office means that he did not prove the counter claim on a balance of probabilities.

219. Flowing from the foregoing analysis, my answer to issue number two [2] is to the effect that the Plaintiff herein has neither established nor proven any rights and/or interests in respect of the suit property.

220. Sadly, the Plaintiff’s claim to and in respect of the Suit property was being propagated on the basis of questionable documents.

### **Issue Number Three:**

#### **Whether the 1<sup>st</sup> Defendant has any ownership rights to and in respect of the suit property of otherwise**

221. The suit property was being contested by the Plaintiff on one hand and the 1<sup>st</sup> Defendant on the other hand. On behalf of the 1<sup>st</sup> Defendant, it was contended that the suit property was duly allocated unto her by the City Council of Nairobi [now defunct].



222. In this regard, the 1<sup>st</sup> Defendant referenced and produced before the court, inter alia, the letter of allotment dated 21<sup>st</sup> February 1992.
223. Additionally, the 1<sup>st</sup> Defendant tendered and produced before the court a lease instrument dated and executed on 2<sup>nd</sup> February 2013. Notably, the lease instrument was signed/executed on behalf of the City Council of Nairobi [now defunct] by the Mayor and Town Clerk, respectively.
224. I am alive to the contention by learned counsel for the Plaintiff that the City Council of Nairobi was rendered defunct upon the promulgation of *the Constitution* 2010. However, it is imperative to underscore that the local authorities, the City Council of Nairobi not excepted, remained in existence up to and until the completion of the first General Election held pursuant to *the Constitution* 2010.
225. At any rate, it is imperative to recall that the first General Election under *the Constitution* 2010 was held on 4<sup>th</sup> March 2013. In this regard, there is no gainsaying that by the 2<sup>nd</sup> February 2013 when the lease in favour of the 1<sup>st</sup> Defendant was executed, the City Council of Nairobi was in existence.
226. Additionally, it follows as a matter of course that there was in place a mayor and a town clerk of the City Council of Nairobi. Consequently, the lease in favour of the 1<sup>st</sup> Defendant was lawfully executed by the Mayor and the Town Clerk respectively, on behalf of the City Council of Nairobi.
227. It is also worthy to underscore that the 1<sup>st</sup> Defendant also tendered and produced before the court a certificate of lease. Instructively, the certificate of lease followed the registration of the lease instrument in 2015.
228. Other than the foregoing, it is also apposite to reference the evidence of DW2. Pertinently, DW2 testified and confirmed that the suit property lawfully belongs to the 1<sup>st</sup> Defendant.
229. To contextualise the position of the 2<sup>nd</sup> Defendant as posited by DW2, it is expedient to reproduce the salient features of the evidence.
230. DW2 testified as hereunder:
- “I do confirm that a lease was issued in favour of the 1<sup>st</sup> Defendant. I do confirm that the lease followed the letter of allotment in favour of the 1<sup>st</sup> Defendant [Grace Gichu]. I do confirm that the lease was eventually registered in favour of the 1<sup>st</sup> Defendant. The lease before the court was lawfully registered in favour of the 1<sup>st</sup> Defendant.”
231. While under cross-examination by learned counsel for the 1<sup>st</sup> Defendant, DW2 is also on record as stating thus:
- “Referred to the letter at page 77 of the Plaintiff’s Bundle of Documents, the witness [DW2] states that the letter in question was addressed to Cecilia Koigu. I wish to state that Cecilia Koigu is currently my boss at the City County Government of Nairobi. The letter by Cecilia Koigu also confirms that the land in question belongs to the 1<sup>st</sup> Defendant.”
232. The totality of the evidence that was tendered by both DW1 and DW2, leaves no doubt that the suit property was lawfully allocated to the 1<sup>st</sup> Defendant. Furthermore, the suit property was thereafter transferred and registered in the name of the 1<sup>st</sup> Defendant. In any event, the 1<sup>st</sup> Defendant holds a certificate of lease in respect thereof.



233. Moreover, there is no gainsaying that the documentation, namely, the letter of allotment, the lease and the various payments by the 1<sup>st</sup> Defendant are traceable to and obtainable in the records of the 2<sup>nd</sup> Defendant [City County Government of Nairobi].
234. In short, the 1<sup>st</sup> Defendant herein has been able to lay before the court plausible, cogent and credible evidence to demonstrate her ownership of the suit property.
235. Before departing from this issue, it is apposite to state that where there is a contest touching on the validity or otherwise of title to land, it behoves the contestants [disputants] to place before the court the transactional documents underpinning the chain leading to the registration of the property in question. In respect of the instant matter, the 1<sup>st</sup> Defendant has satisfied the equation.
236. To this end, I adopt and reiterate the decision of the Court of Appeal in the case of *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR where the court stated as hereunder:

We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.

237. In answer to issue number three [3], I come to the conclusion that the 1<sup>st</sup> Defendant herein is the lawful and registered owner of the suit property. In any event, the ownership rights of the 1<sup>st</sup> Defendant were vindicated by DW2 who came from the County Government of Nairobi.

#### **Issued Number Four**

##### **What reliefs, if any, ought to be granted.**

238. The Plaintiff sought a plethora of reliefs at the foot of the Complaint dated 1<sup>st</sup> October 2019. Notably, the Plaintiff sought a declaration that same [Plaintiff] is the lawful and legitimate proprietor of the suit property.
239. Nevertheless, even though the Plaintiff sought a declaration that same is the lawful and legitimate proprietor of the suit property, it is worthy to recall that PW1 admitted and acknowledged in the course of his evidence that the Plaintiff herein has never been issued with any lease or certificate of lease. Furthermore, PW1 stated that the Plaintiff has no ownership documents to the suit property.
240. The question that does arise and which merits consideration is whether a person who is not in possession of any ownership documents and whose claim is based on an invalid letter of allotment can partake of a declaration in the manner sought.
241. However, my short answer is that such a person cannot procure a declaration. In any event, a declaratory order cannot issue and be granted in vacuum.
242. Other than the order for declaration of ownership, the Plaintiff herein also sought an order of permanent injunction. In my humble view, an order of permanent injunction can and does issue to vindicate the rights of a registered proprietor and not otherwise.
243. Be that as it may, it is not lost on the court that it has been found and held that the Plaintiff herein has not proven its rights to and in respect of the suit property. On the contrary, it has been found and held that the suit property belongs to the 1<sup>st</sup> Defendant.



244. Can an order of permanent injunction issue and/or be issued against the 1<sup>st</sup> Defendant who is the registered owner of the suit property. The answer is in the negative. In any event, if such an order were to issue, it would be tantamount to negating the statutory rights and privileges accorded to the registered owner vide Sections 24 and 25 of the *Land Registration Act* 2012.

245. Furthermore, it is imperative to adopt the holding of the Court of Appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR

It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.

246. Other than the primary reliefs that were sought at the foot of the Plaintiff, it is also worthy to recall that the Plaintiff sought an alternative prayer. For good measure, the alternative prayer was to the effect that the court be pleased to grant damages equivalent to the market value of the property at the time of the judgement.

247. Nevertheless, it is apparent that the Plaintiff did not venture forward to plead [sic] the purported value of the suit property.

248. Moreover, there is no gainsaying that the claim for recompense on account of the value of the suit property is a liquidated/special claim. In this regard, such a claim must not only be pleaded with the requisite particularities but must also be specifically/strictly proved.

249. I beg to state that the Plaintiff did not comply with the law attendant to pleading and proving liquidated/special damages. In the absence of the requisite pleadings and in the absence of specific proof, the alternative prayer hangs by a thread.

250. Suffice it to invite the attention of the learned counsel for the Plaintiff to the decision of the Court of Appeal in the case of *Superior Homes (Kenya) PLC v Water Resources Authority & 9 others* [2024] KECA 1102 (KLR) where the court reiterated and re-affirmed the position of the law as pertains to pleading and proving special damages.

251. For coherence, the court stated as hereunder:

73. It is a basic principle that, before a court can award special damages, those damages must be specially pleaded and strictly proved. In *Ouma v. Nairobi City Council* [1976] KLR 207, Chesoni, J. (As he then was) held as follows:

“Thus for a plaintiff to succeed on a claim for special damages he must plead it with sufficient particularity and must also prove it by evidence.”

The authors of *McGregor on Damages* (10th Edition), Para. 1498 explain why special damages must be specially pleaded, as follows:

“Where the precise amount of particular item of damages has become clear before the trial, either because it has already occurred and so become crystallised, or because it can be measured with complete accuracy, the exact loss must be pleaded as special damages”.

Similarly, in *Banque Indosuez v. D J. Lowe & Co. Ltd.* [2006] 2 KLR 208, this Court held as follows:

“It is simply not enough for the respondent to pluck figures from the air and throw them in the face of the court and expect them to be awarded. It is trite that special



damages must not only be claimed specially but proved strictly for they are not the direct and natural or probable consequences of the act complained of and may not be inferred from the act.”

74. When the law requires special damages to be specially pleaded, it means that those damages must be stated with certainty and particularity in the plaint or petition. If the damages are not tabulated in the plaint or petition, the party claiming them must apply to amend the plaint or petition to include them. Such party cannot purport to specially plead special damages in a subsequent affidavit. The reason for this is plain to see.
252. I am afraid that the Plaintiff herein is not entitled to the claim for damages equivalent to the value of the suit property. In any event and in the absence of a valuation report, the court would be groping in darkness in an endeavour to even come to the value of the property.

**Final Disposition:**

253. Flowing from the discussion [details highlighted in the body of the judgement], it is evident that the Plaintiff herein has neither proved nor demonstrated its claim to and in respect of the suit property to the requisite standard. In any event, it is elementary law that a party can only succeed on the strength of its case and not on the weakness of the defence.
254. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder:
- i. The Plaintiff’s suit be and is hereby dismissed.
  - ii. Costs of the suit be and are hereby awarded to the Defendants.
255. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**

**OGUTTU MBOYA**

**JUDGE.**

In the presence of:

Mutuma/Benson – Court Assistant.

Ms. Wambui Kyama for the Plaintiff.

Mr. Hassan Abdi for the 1<sup>st</sup> Defendant.

Mr. Odiwuor h/b for Mr. Magolo for the 2<sup>nd</sup> Defendant.

N/A for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

