



Murunga v Green Valley Limited & 3 others (Environment & Land Case 1549 of 2013) [2025] KEELC 15 (KLR) (16 January 2025) (Judgment)

Neutral citation: [2025] KEELC 15 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1549 OF 2013**

**JO MBOYA, J
JANUARY 16, 2025**

BETWEEN

SULEIMAN MURUNGA PLAINTIFF

AND

GREEN VALLEY LIMITED 1ST DEFENDANT

NILESTAR HOLDINGS LIMITED 2ND DEFENDANT

NATIONAL LAND COMMISSION 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

Introduction And Background

1. The instant suit is yet another classic case of justice delayed and justice denied. For coherence, it is important to recall that the suit beforehand was commenced vide Plaint dated the 24th December 2013. To this end, the suit herein has graced the corridors of justice for more than 12 years.
2. Be that as it may, it is important to underscore that the blame attendant to the delay in the hearing and finalization of this suit does not lie squarely and/ or exclusively on the judiciary. Suffice it to state that the advocates for the parties and more particularly, the advocates for the Plaintiff have substantially contributed to the delay in the hearing and conclusion of the dispute. In this respect, the record of the court is a living testimony.
3. Hopefully and with time, litigant[s] and their respective advocates shall embrace and inculcate in themselves the virtues underpinned by the provisions of Sections 1A and 1B of the *Civil Procedure Act*, Chapter 21 Laws of Kenya; and the provisions of Article 159[2][b] of *the Constitution* 2010.



4. Be that as it may, the Plaintiff has approached the court vide Plaint dated the 24th December 2013; and which Plaint was thereafter amended, culminating into the Amended Plaint dated the 19th December 2016.
5. Vide the Amended Plaint dated the 19th December 2016, the Plaintiff has sought for the following reliefs;
 - i. A declaration that he [Plaintiff] is the legal and/or beneficial owner of the property known as L.R. No. 209/918, Kenyatta Avenue, Nairobi upon which the business of Simmers Restaurant is carried on.
 - ii. A declaration that the Landlord/tenant relationship that hitherto existed between the 1st Defendant and the Plaintiff determined upon the expiry of the 1st Defendant's leasehold term with the Government and the subsequent allocation of the property known as L.R. No. 209/918, Kenyatta Avenue Nairobi to the Plaintiff.
 - iii. An order that the purported distress levied upon the Plaintiff's moveable goods on or about the 17th day of December 2013 by or on behalf of the Defendant was illegal, null and void and of no legal basis.
 - iv. A permanent injunction restraining the Defendants, their agents, servants or assigns from alienating, selling, transferring, leasing, charging or in any way disposing of and from levying distress upon the Plaintiff's moveable goods or trespassing upon or interfering with or evicting the Plaintiff from the property known as L.R. No. 209/918 Kenyatta Avenue, Nairobi.
 - v. A declaration that the purported withdrawal or revocation by the 3rd Defendant, vide its letter dated 18th February, 2016 of the Plaintiff's letter of allotment Ref. No. GL/11/29941 dated 3rd November 2011 was improper, irregular, illegal, null and void and of no legal effect.
 - vi. A declaration that the issuance by the 4th Defendant of the Certificate of Title dated 30th March, 2015 to the 1st Defendant was improper, illegal, null and void and of no legal effect.
 - vii. An order directing the 4th Defendant to recall and cancel the Certificate of title dated 30th March, 2015 issued to the 1st Defendant and to rectify the register relating to the said property accordingly.
 - viii. An order directing the 4th Defendant to issue a Certificate of Title to the Plaintiff pursuant to the letter of Allotment Ref: GH/11/299941 and dated 3rd November, 2011.
 - ix. Costs and interest thereon.
6. Upon being served with the original Plaint, the 1st Defendant duly entered appearance and thereafter filed a statement of defence dated the 14th February 2017. Subsequently, the statement of defence under reference was amended with leave of the Honourable court.
7. The amended statement of defence on behalf of the 1st Defendant embodies a counterclaim in respect of which the 1st Defendant has sought for the following reliefs;
 - i. Loss of rental income from May 2013 to 3rd March, 2018 at Kshs. 180,000/=only per Month.
 - ii. Loss of 10% yearly increment on rental income from 2013 to date of Judgement.
 - iii. Interest on (a) and (b) above at 14% from May 2013 till payment in full.
 - iv. General damages for trespass.



- v. An order of vacant possession of the suit property more particularly known as L.R. No. 209/918 situate along Kenyatta Avenue, Nairobi.
 - vi. An order directed at the Officer Commanding Central Police Station Nairobi to supervise eviction of the Plaintiff from the suit property.
8. The 2nd Defendant also entered appearance and filed a statement of defence dated the 7th February 2017. Notably, the statement of defence also includes a counterclaim and wherein the 2nd Defendant has sought for similar reliefs [verbatim] like the ones highlighted at the foot of the counterclaim by the 1st Defendant.
 9. Though served with the Plaint and summons to enter appearance, the 3rd Defendant herein neither entered appearance nor filed any statement of defence.
 10. On the other hand, the 4th Defendant duly entered appearance but did not file any statement of defence. Be that as it may, the 4th Defendant participated in the proceedings in accordance with the provisions of Order 10 of the Civil Procedure Rules, which allows a party who has entered appearance to participate in the proceedings and where apposite to cross examine the witness [if any] called by the adverse parties.
 11. The Plaintiff filed a reply to the defence and defence to the two [2] sets of counterclaims filed by the 1st and 2nd Defendants. For good measure, the reply to defence and defence to counterclaim is dated the 23rd February 2017.
 12. The instant matter came up for case conference on the 3rd March 2023, whereupon the advocates for the respective parties intimated to the court that same [parties] had filed and exchanged the requisite pleadings; list and bundle of documents and witness statements. In addition, the parties confirmed that the matter was therefore ready/ripe for hearing.

Evidence by the Parties:

a. Plaintiff's case:

13. The Plaintiff's case is anchored on the evidence of one witness, namely, Suleiman Murunga. Same testified as PW1.
14. It was the testimony of the witness [PW1], that same is conversant with and knowledgeable of the facts of the case. In addition, the witness averred that same is a business person engaged in assorted business within the City of Nairobi. Furthermore, the witness averred that same is also a former Member of Parliament [National Assembly] for Kimilili Constituency.
15. It was the further testimony of the witness that by virtue of being the Plaintiff in respect of instant matter, same is conversant with the facts of the case. In this regard, the Witness averred that same has equally recorded and filed a witness statement. To this end, the witness referenced the witness statement dated the 24th December 2013 and which witness statement the witness sought to adopt and rely on as his evidence in chief.
16. Suffice it to state that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
17. Additionally, the witness averred that same has also filed a further witness statement dated the 9th October 2023. Thereafter the witness sought to adopt and rely on the witness statement under reference. Instructively, the further witness statement dated the 9th October 2023 was adopted and constituted as the further evidence in chief of the witness.



18. Similarly, the witness adverted to the List and bundle of documents dated the 24th December 2013; and thereafter sought to tender and produce the documents thereunder as exhibits before the court. There being no objection to the production under reference, same [documents] were tendered and admitted as exhibits P1 to P11, respectively on behalf of the Plaintiff.
19. On the other hand, the witness also averred that same has also filed a supplementary list and bundle of documents. To this end, the witness referenced the supplementary list and bundle of documents dated the 13th January 2023.
20. Suffice it to state that the witness sought to tender and produce the documents as exhibits. In this regard and in the absence of any objection to the production of the documents, same were produced as exhibits P12 to P69, respectively, on behalf of the Plaintiff.
21. It was the further testimony of the witness that same was previously a tenant of the 1st and 2nd Defendants herein. For good measure, the witness averred that the tenant relationship commenced sometimes in the year 1999. However, the witness averred that the 1st and 2nd Defendants' lease in respect of the suit property expired and thereafter same [witness] was issued with a letter of allotment.
22. It was the further testimony of the witness that following the expiry of the lease term in favour of the 1st and 2nd Defendants, the tenancy relationship which had hitherto existed lapsed and or stood extinguished.
23. Other than the foregoing, the Plaintiff referenced the amended Plaint dated the 19th of December 2016; and thereafter invited the court to grant the reliefs sought thereunder.
24. On cross examination by learned counsel for the 1st Defendant, the witness averred that same was hitherto a Tenant of the 1st Defendant. In particular, the witness stated that same was a tenant of the 1st Defendant from the year 1999 up to December 2009. Furthermore, the witness averred that during the period of tenancy same [witness] was paying monthly rent of kes.180, 000/= only.
25. Whilst still under cross examination, the witness averred that the rents were being paid to the 1st Defendant. Nevertheless, the witness stated that same [witness] stopped paying rents from the month of January 2010.
26. It was the further testimony of the witness that upon the lapse of the 1st and 2nd Defendants' lease over the suit property, same [witness] applied to be allocated the suit plot. At any rate, the witness testified that same was subsequently issued with a letter of allotment dated the 3rd November 2011.
27. The witness further testified that between the time when the 1st and 2nd Defendants' lease expired up to and including when same [witness] was issued with the letter of allotment, the witness ceased to pay rents. In particular, the witness averred that the 1st Defendant ceased to be the registered owner/ proprietor of the suit property.
28. Other than the foregoing, it was the testimony of the witness that even though same was issued with a letter of allotment in respect of the suit property, same [witness] has never been issued with a certificate of title/lease over the suit property.
29. It was the further testimony of the witness that same is aware of the proceedings that were commenced before the Business Premises Rent Tribunal. The witness averred that the proceedings were filed by himself as against the 1st and 2nd Defendants. Nevertheless, the witness averred that the tribunal ordered and directed that same continue to pay rents to the 1st Defendant.



30. Additionally, the witness testified that same was duly informed of a court order that had been issued by Justice Muga Apondi. However, the witness clarified that he was not a party to the said suit.
31. On further cross examination by learned counsel for the 1st Defendant, the witness averred that same is not aware whether the lease in favour of the 1st Defendant was ever renewed.
32. Furthermore, the witness testified that despite not having been issued with a certificate of title/lease, same [witness] is the lawful owner of the suit property.
33. On cross examination by learned counsel for the 2nd Defendant, the witness averred that the lease agreement in respect of the suit property was reduced into writing. At any rate, the witness averred that the lease in question was open-ended.
34. It was the further testimony of the witness that the monthly rents were agreed in the sum of Kes.180,000/= only. Furthermore, the witness added that same paid the rents up to and including December 2009.
35. It was the further testimony of the witness that subsequently, same [witness] applied to be allocated the suit property. In this regard, the witness averred that same was duly issued with a letter of allotment.
36. Regarding a question as to whether the Letter of allotment issued in his favour has ever been cancelled, the witness averred that same has never seen any letter cancelling his letter of allotment.
37. Nevertheless, upon being shown Plaintiff exhibit 38, the witness stated that same [exhibit p38] is a letter from National Land Commission withdrawing his [Plaintiff's] letter of allotment.
38. Additionally, the witness averred that same occupied two [2] plots. Besides, the witness added that the instant suit touches on and concerns the two [2] Plots/Properties.
39. Whilst still under cross examination, the witness averred that even though same was issued with a letter of allotment, no certificate of lease/title has ever been issued and/ or granted unto him.
40. Other than the foregoing, it was the testimony of the witness that same had filed a suit before the Business Premises Rent Tribunal [BPRT] because the 1st Defendant herein had attempted to levy distress for rent arrears. Nevertheless, the witness averred that the proceedings before the Business Premises Rent Tribunal were dismissed.
41. On cross examination by learned counsel for the 4th Defendant, the witness averred that same has sued the honourable Attorney General because he [witness] wants the Attorney General to issue orders to the commissioner of lands to issue the certificate of lease in his [witness] favour.
42. Upon being referred to the supplementary list and bundle of documents and in particular, the letter dated the 25th October 2010, the witness averred that same only came across the said letter in the year 2023.
43. It was the further testimony of the witness that despite having been issued with a letter of allotment, no grant or certificate of title has ever been issued. In particular, the witness conceded that same has never been issued with a certificate of title.
44. On re-examination, the witness averred that the distress was being levied by the 1st Defendant on the basis of rent arrears due and owing from the suit property. The witness added that the distress for rent was done in the year 2013.



45. It was the further testimony of the witness that by the time the distress was being levied/undertaken, the 1st Defendant was not the registered owner of the suit property. On the contrary, the witness averred that the suit property had been allocated unto him.
46. It was the further testimony of the witness that the distress that was being levied was illegal and unlawful.
47. With the foregoing testimony, the Plaintiff's case was closed.

b. 1st Defendant's Case:

48. The 1st Defendant's case is premised on the evidence of one witness, namely, Jamilleh Ebrahim. Same testified as DW1.
49. It was the testimony of the witness [DW1] that same is a director of the 1st Defendant. In addition, the witness averred that by virtue of being a director of the 1st Defendant, same [DW1] is therefore authorized to attend court and testify on behalf of the 1st Defendant.
50. On the other hand, it was the testimony of the witness that same has since recorded and filed a witness statement. To this end, the witness referenced the witness statement dated the 10th February 2017. Furthermore, the witness sought to adopt and rely on the witness statement as her evidence in chief.
51. Suffice it to state that the witness statement dated the 10th February 2017 was thereafter admitted as the evidence in chief of the witness.
52. Additionally, the witness averred that same has recorded and filed a further witness statement dated the 6th March 2021. To this end, the witness sought to adopt and rely on the evidence.
53. Notably, the further witness statement dated the 6th March 2021 was constituted as the further evidence of the witness.
54. It was the further testimony of the witness that the 1st Defendant filed a list and bundle of documents dated the 10th February 2017. In this regard, the witness sought to tender and produce the documents as exhibits before the court.
55. Suffice it to state that the production of the document at the foot of the list of documents dated the 10th February 2017 was objected to by learned counsel for the Plaintiff. However, midstream the objection, learned counsel for the Plaintiff sought to withdraw the objection. In this respect, the objection was marked as withdrawn and the documents in question were produced as exhibits D1 to D7, respectively, on behalf of the 1st Defendant.
56. On the other hand, the witness also referenced the further list and bundle of documents dated the 11th June 2021 and thereafter sought to produce same as exhibits before the court. However, the endeavour to produce the documents as exhibits before the court was objected to by learned counsel for the Plaintiff culminating into the rendition of a ruling.
57. It suffices to underscore that the objection by learned counsel for the Plaintiff was overruled and the documents under reference were admitted as exhibits D8 to D21, respectively on behalf of the 1st Defendant.
58. The witness further adverted to the statement of defence and counterclaim dated the 11th June 2021. In this regard, the witness invited the court to adopt the contents of the amended statement of defence and counterclaim and to grant the orders/reliefs sought thereunder.



59. On cross examination by learned counsel for the 2nd Defendant, the witness averred that same [witness] is a director of the 1st Defendant. In addition, the witness testified that the Plaintiff herein was a tenant of the 1st Defendant in the suit property.
60. Whilst under cross examination, the witness averred that the 1st Defendant is claiming for rents that were not paid. To this end, the witness has stated that the Plaintiff was obligated to pay the rent arrears.
61. Whilst still under cross examination, the witness averred that the 1st Defendant herein filed a suit against the 2nd Defendant. Furthermore, it was averred that the suit under reference was subsequently settled vide a Deed of Settlement entered into by the parties and thereafter filed in court.
62. It was the further testimony of the witness that same [witness] is also aware that the Plaintiff filed various proceedings before the tribunal. However, the witness averred that the proceedings before the tribunal were dismissed.
63. On cross examination by learned counsel for the 2nd Defendant, the witness averred that the 1st Defendant has no claim against the honourable attorney general. Nevertheless, the witness testified that the suit beforehand touches on and concerns two [2] plots. In any event, the witness added that the 1st Defendant is the owner of the two plots which are in dispute.
64. On further cross examination, the witness averred that the Plaintiff herein was only occupying one property. It was the further testimony of the witness that the lease in respect of the two [2] properties, namely, L.R No. 209/908 and L.R No. 209/918, respectively expired in the year 2009. Nevertheless, the witness averred that the lease in respect of both properties was renewed/extended. For good measure, the witness averred that the 1st Defendant was issued with the requisite certificate of leases.
65. On cross examination by learned counsel for the Plaintiff, the witness averred that same is indeed a director of the 1st Defendant company. In particular, the witness averred that the directorship of the company followed upon the death of her father. In this regard, the witness testified that following the death of her father, the shares in respect of the 1st Defendant transmitted to and vested in her [witness].
66. It was the further testimony of the witness that even though same has contended that the shares were transmitted to her, same [witness] has not produced before the court a copy of the grant of letters of administration/grant of probate.
67. It was the further testimony of the witness that the stand premium in respect of the renewal of the leases were duly paid to the commissioner of lands/ministry of lands. To this end, the witness averred that the payments were made vide RTGS. Additionally, the witness referenced various Documents which have been produced before the Court.
68. Whilst still under cross examination, the witness averred that though the payments were made by M/s Wairima Company Ltd, same [payments] were on instructions of the 1st Defendant. In any event, the witness averred that the payment receipts were issued in favour of the 1st Defendant.
69. On re-examination, the witness averred that the suit properties, namely, L.R No. 209/908 and 918, are co-owned by the 1st and 2nd Defendants.
70. It was the further testimony of the witness that the two [2] properties are currently registered in the names of M/s Nilestar Holdings Ltd and Green Valley Ltd.
71. Whilst still under re-examination, the witness averred that the certificate of title/leases in respect of the two [2] properties are with the 1st Defendant.



72. With the foregoing testimony, the 1st Defendant's case was duly closed.

c. 2nd Defendant's case:

73. The 2nd Defendant's case revolves around the evidence of one witness, namely, Stephen Kirumba Njoroge. Same testified as DW2.
74. It was the testimony of the witness [DW2] that same is a director of the 2nd Defendant. In addition, the witness averred that by virtue of being a director of the 2nd Defendant, same is therefore conversant with the facts of this case and thus authorized to attend court and testify on behalf of the 2nd Defendant.
75. Additionally, the witness averred that same has since recorded and filed a witness statement dated the 12th June 2024. In this regard, the witness sought to adopt and rely on the contents of the witness statement as his evidence in chief. To this end, the witness statement was duly adopted and constituted and the evidence in chief of the witness.
76. Other than the witness statement, the witness adverted to a list and bundle of document filed on behalf of the 2nd Defendant. In particular, the witness referenced the list and bundle of documents dated the 20th June 2023 and which documents the witness sought to tender and produce as exhibit[s] before the court.
77. There being no objection to the production of the documents under reference, same [documents] were tendered and produced as exhibits D1 to D24, respectively on behalf of the 2nd Defendant.
78. Similarly, the witness referenced the statement of defence and counterclaim dated the 7th February 2017 and thereafter invited the court to adopt and rely on the contents thereof. In particular, the witness invited the court to grant the reliefs sought thereunder.
79. On cross examination by learned counsel for the 1st Defendant, the witness averred that same [witness] is a director of the 2nd Defendant. Furthermore, the witness averred that the 1st Defendant herein had sued the 2nd Defendant over and in respect of ownership of the two [2] properties, namely, L.R No. 209/908 and L.R No. 209/918. Nevertheless, the witness averred that the dispute between the 1st and 2nd Defendant was settled vide a Deed of settlement.
80. On cross examination by learned counsel for the 4th Defendant, the witness averred that same is before the court in his [witness capacity] as a director of the 2nd Defendant. In this regard, the witness averred that same is authorized/mandated to testify on behalf of the 2nd Defendant.
81. Additionally, it was the testimony of the witness that the leases in respect of the suit property [ies] were duly renewed in favour of the 1st Defendant. In particular, the witness averred that the certificate[s] of title were duly issued.
82. It was the further testimony of the witness that the Plaintiff herein was a tenant of the 1st and 2nd Defendants. In any event, it was averred that the Plaintiff has never been the registered owner of the suit properties.
83. Whilst still under cross examination, the witness averred that same has produced a letter of allotment dated the 3rd November 2011. Furthermore, the witness averred that the letter of allotment under reference relates to L.R No. 209/918.
84. It was the further testimony of the witness that same [witness] has never seen a letter of allotment issued to the Plaintiff in respect of L.R No. 209/918.



85. Upon being referred to exhibit D13, the witness averred that same [exhibit D13] is a copy of the certificate of title in respect of L.R No. 209/918. In any event, the witness averred that the certificate of title was registered in the name of the 1st Defendant.
86. It was the further testimony of the witness that the Plaintiff herein has never been issued with a certificate of title in respect of the suit properties. For good measure, the witness averred that L.R No. 209/918 belongs to the 1st Defendant.
87. Whilst still under cross examination, the witness averred that same has also tendered and produced before the court a letter of allotment issued in favour of the Plaintiff. In any event, the witness averred that the letter of allotment in favour of the Plaintiff was signed by one P. K Kahuho on behalf of the commissioner of lands. However, the witness averred that same is not aware of whether the said P K Kahuho had the authority to act and/or sign a letter of allotment on behalf of the commissioner of lands.
88. Notwithstanding the foregoing, the witness averred that the Plaintiff herein has never been issued with a certificate of lease/title to the suit property. It was the further testimony of the witness that same has also availed to court a letter from the National Land Commission [NLC] pertaining to the letter of allotment that was issued in favour of the Plaintiff. In particular, the witness averred that the letter from National Land Commission was cancelling the Plaintiff's letter of allotment.
89. On cross examination by learned counsel for the Plaintiff, the witness averred that exhibit D7 produced on behalf of the 2nd Defendant is a letter of allotment. Furthermore, the witness added that the letter of allotment is addressed to the Plaintiff. In addition, the witness averred that the land at the foot of the letter of allotment [exhibit D7] is L.R No. 209/918.
90. Whilst under cross examination, the witness averred that the letter of allotment in question was signed by P. K Kahuho on behalf of the commissioner of lands. Nevertheless, the witness averred that same [witness] is not aware whether the author of the letter of allotment was authorized to sign on behalf of the commissioner of lands.
91. It was the further testimony of the witness that same is aware that the letter of allotment in favour of the Plaintiff was cancelled. In this regard, the witness adverted to and referenced the letter by the National Land Commission cancelling/withdrawing the letter of allotment in favour of the Plaintiff.
92. Whilst still under cross examination, the witness averred that same [witness] is a director of the 2nd Defendant. Nevertheless, the witness averred that despite being a director of the 2nd Defendant, same [witness] has not produced any document to show/demonstrate that he is a director of the 2nd Defendant. In particular, the witness has averred that same has not produced a copy of CR12 of the 2nd Defendant company.
93. On further cross examination, the witness averred that prior to his [witness] becoming a director of the 2nd Defendant, the previous director was Margaret Wairimu Mahuhu. However, the witness clarified that the directorship of the 2nd Defendant was passed to him through a Deed of Trust.
94. It was the further testimony of the witness that there was a dispute between the 1st and 2nd Defendants over ownership of the suit properties. However, the witness averred that the dispute between the 1st and 2nd Defendants was settled vide a Deed of settlement. In any event, the witness averred that the Deed of settlement was indeed filed in court.
95. Additionally, the witness testified that though the leases in respect of the suit properties expired, the 1st Defendant applied for extension/renewal of the lease term. Furthermore, the witness averred that the



term of the leases were duly renewed. At any rate, the witness averred that the letter seeking for renewal of the leases were written prior to the expiry of the lease term.

96. On re-examination by learned counsel for the 2nd Defendant, the witness averred that the letter seeking extension of the lease term was written before the expiration of the lease. In particular, the witness confirmed that the letters were duly transmitted to the commissioner of lands.
97. Upon being referred to the document at pages 18 and 19 of the 2nd Defendant's list and bundle of documents, the witness averred that the document is a letter from the National Land Commission. In particular, the witness averred that the letter was addressed to the Plaintiff herein.
98. Whilst under re-examination, the witness averred that the letter from National Land Commission was withdrawing the letter of allotment in favour of the Plaintiff. In this regard, the witness averred that the Plaintiff's letter of allotment was duly withdrawn/cancelled.
99. Upon being referred to document number one [1] at the foot of the list and bundle of documents by the 2nd Defendant, the witness averred that same [document] is a court order. In any event, the witness added that the court order directed the Plaintiff herein to continue paying rents in respect of the suit property to the 1st and 2nd Defendants.
100. With the foregoing testimony, the 2nd Defendant's case was duly closed.

d. 3rd Defendant's case:

101. Though the 3rd Defendant was duly served with the Plaint and summons to enter appearance [STEA] same [3rd Defendant] neither entered appearance nor filed any statement of defence. Furthermore, the Third Defendant also did not participate in the proceedings.

e. 4th defendant's case:

102. The 4th Defendant herein duly entered appearance, but did not file a statement of defence. Nevertheless, the 4th Defendant participated in the proceedings by dint of the provisions of Order 10 of the Civil Procedure Rules, which essentially allows a party who has entered appearance to participate in the proceedings.
103. Nevertheless, it suffices to state that learned counsel appearing for the 4th Defendant intimated to the court that same had no witness. Instructively, the 4th Defendant could not have called a witness taking into account that same had not filed a statement of defence.
104. Pertinently, the 4th Defendant's case was closed without calling of any witness

Parties' Submissions:

105. Following the close of the hearing, the advocates for the parties covenanted to file and exchange written submissions. In this regard, the court ventured forward and circumscribed the timelines for filing and exchange of written submissions.
106. The Plaintiff herein filed three [3] sets of written submissions, namely, the maiden submissions dated the 4th November 2024; the Plaintiff's reply to submissions by the Defendants dated the 9th December 2024 and the Plaintiff's response to the submissions by the Honourable Attorney General dated the 9th January 2025. Notably, the three [3] sets of written submissions by the Plaintiff form part of the record of the court.



107. The 1st Defendant filed written submissions dated the 25th November 2024 and wherein the 1st Defendant has canvassed and highlighted six [6] salient issues for consideration.
108. On the other hand, the 2nd Defendant has similarly filed written submissions dated the 25th November 2024. Notably, the submissions by the 2nd Defendant herein recap[s] the submissions by the 1st Defendant.
109. Finally, the Honourable Attorney General filed written submissions dated the 2nd December 2024 and wherein the Honourable Attorney General has contended in the main that the Plaintiff herein cannot be heard to stake a claim to ownership of the suit properties in the absence of the requisite certificate of title. In any event, it has been contended that the letter of allotment which is propagated by the Plaintiff herein was cancelled/withdrawn by the National Land Commission.
110. It is instructive to state that the various sets of written submissions [details in terms of the preceding paragraphs] form part of the record of the court. Furthermore, the court has reviewed and considered the issues raised at the foot of the submissions under reference.
111. Even though the court has not reproduced and/or rehashed the thematic issues in the body of the judgment, it suffices to state that the submissions herein have been taken into account in the determination of the salient issues. Furthermore, it is also pertinent to state that the court is grateful and indebted to the advocates for the parties for the comprehensive submissions filed.
112. Pertinently, the submissions filed and the case laws cited thereunder have been of great help to and have indeed assisted the Honourable Court in determining the Issues in Dispute.

Issues for Determination:

113. Having reviewed the pleadings filed by the parties, and having taken into account the evidence tendered [both oral and documentary] and having considered the written submissions filed on behalf of the respective parties, the following issues crystalize and are thus worthy of determination;
 - i. Whether the Plaintiff herein is the lawful or beneficial owner of L.R No. 209/918, Kenyatta Avenue in the manner claimed or otherwise.
 - ii. Whether the letter of allotment issued to the Plaintiff in respect of L.R No. 209/918, vested and/or conferred the Plaintiff herein with any lawful rights to and in respect of the suit property.
 - iii. Whether the cancellation, revocation and/or withdrawal of the letter of allotment in favour of the Plaintiff by the 3rd Defendant was irregular, illegal and thus invalid or otherwise.
 - iv. Whether the Plaintiff herein is entitled to an order for cancellation and/or revocation of the certificate of title issued in favour of the 1st Defendant.
 - v. Whether the 1st Defendant is the lawful and legitimate proprietor of the suit property and if so; whether same is entitled to the requisite protection of the law.
 - vi. What orders, if any; ought to issue.



Analysis and Determination

Issue Number 1 and 2

Whether the Plaintiff herein is the lawful or beneficial owner of L.R No. 209/918, Kenyatta Avenue in the manner claimed or otherwise.

Whether the letter of allotment issued to the Plaintiff in respect of L.R No. 209/918, vested and/or conferred the Plaintiff herein with any lawful rights to and on respect of the suit property.

114. The Plaintiff herein filed the instant suit and same has sought for a plethora of reliefs. Pertinently, the Plaintiff herein has sought for a declaration that same [Plaintiff] is the legal and beneficial owner of L.R No. 209/918 [suit property herein].
115. To the extent that the Plaintiff herein contends that same is the legal and or beneficial owner of the suit property, it behoves the court to interrogate the foundation of the Plaintiff's claim and thereafter to discern whether or not the Plaintiff is indeed the legal owner of the suit property.
116. To start with, the Plaintiff contends that though same was hitherto a tenant of the 1st Defendant in respect of the suit property, the 1st Defendant's lease to the suit property lapsed/expired sometime in the year 2009. In this regard, the Plaintiff averred that thereafter same applied to be allocated the suit property.
117. It was the Plaintiff's further evidence that upon the application to be allocated the suit property, same [Plaintiff] was issued with a letter of allotment. To this end, the Plaintiff referenced the letter of allotment dated the 3rd November 2011.
118. It was the further testimony of PW1 that upon being issued with a letter of allotment, same proceeded to and complied with the terms thereof. In particular, PW1 testified that same paid the requisite stand premium and the statutory levies attendant thereto.
119. Be that is it may, it was the further testimony of the witness [PW1] that despite having been issued with a letter of allotment, same [Plaintiff] was never issued with a certificate of title. To this end, it suffices to take cognizance of the evidence of PW1 whilst under cross examination by learned counsel for the 1st Defendant.
120. Same [PW1] stated thus;
- “I have not been issued with a certificate of title”.
121. On the other hand, and whilst under cross examination by learned counsel for the 2nd Defendant, PW1 stated as hereunder;
- “I was issued with a letter of allotment. I duly complied with the terms of the letter of allotment. I have not seen any letter cancelling my letter of allotment. I can see exhibit number P38. I can confirm that it is a letter from national land commission. The letter relates to the property herein”.



122. Furthermore, and whilst under cross examination by learned counsel for the 2nd Defendant, PW1 stated thus;

“I went for the letter of allotment and I signed for the letter of allotment. I have not been issued with a certificate of lease over the suit property”.

123. It is also apposite to take cognizance of the evidence of PW1 whilst under cross examination by learned counsel for the 4th Defendant.

124. PW1 stated thus;

“I have sued the attorney general because I want the attorney general to direct the chief land registrar to issue me with a certificate of lease. I have not been issued with a certificate of lease over the suit property”.

125. From the evidence on record, there is no gainsaying that the Plaintiff herein has not been issued with the certificate of title/lease over and in respect of the suit property. In this regard, it is common ground that the Plaintiff herein cannot contend that same is the legal owner of the suit property.

126. Suffice it to underscore that one, the Plaintiff not excepted, can only contend to be the legal owner of a landed property upon registration and subject to being issued with a certificate of title/certificate of lease under the relevant statute. [see the provisions of Section 24 and 25 of the [Land Registration Act](#)].

127. Other than the foregoing provisions, the legal position that one can only stake a claim as a legal owner/ proprietor of a landed property upon issuance of certificate of title has also been highlighted in a plethora of decision.

128. Notably, the Court of Appeal espoused the position herein in the case of *Wreck Motor Enterprises versus Commissioner of Lands & 3 others* [1997] eKLR, where the court 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. See *Dr. Joseph N.K. Arap Ng'ok v Justice Mojjo ole Keiwua & 4 Others*, Civil Application No. NAI.60 of 1997 (unreported). Sections 23(1) of the Registration of Titles Act reads as follows:-

"Section 23 (1)

The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misinterpretation to which he is proved to be a party."

129. In the absence of a certificate of title, issued to and in favour of the Plaintiff herein, the claim by and on behalf of the Plaintiff to be the legal owner of the suit property is therefore misconceived and legally untenable. Instructively, the claim herein is built on quick- sand.

130. The other limb that underpins the Plaintiff's claim to ownership of the suit property is the issuance of the letter of allotment dated the 3rd November 2011. Two aspects arise and merit consideration.



131. The first aspect/ perspective relates to the fact that the impugned letter of allotment which is being propagated by the Plaintiff was cancelled and or withdrawn. To the extent that the letter of allotment was cancelled, there is no gainsaying that same [letter of allotment] ceased to exist in eye of the law.
132. The second aspect/perspective touches on and concerns whether a letter of allotment can confer any legal rights to and in respect of the suit property. Suffice it to underscore that a letter of allotment constitutes an offer by the government and nothing more.
133. Further and in any event, once a person, the Plaintiff herein is issued a letter of allotment, it behoves the allottee to comply with the terms of the letter of allotment inter-alia, accepting the terms thereof and making the payments within the set timelines. In respect of the instant matter, it is not lost on the court that the Plaintiff did not tender and produce [sic] the letter of acceptance.
134. Notwithstanding the foregoing, it is apposite to state that the legal position pertaining to whether or not a letter of allotment can underpin the right to ownership of land was addressed by the Supreme Court of Kenya in the case of *Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022)* [2023] KESC 79 (KLR) (22 September 2023) (Judgment), where the court stated as hereunder;
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].
60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter. In *Peter Wariire Kanyiri v Chrispus Washumbe & 2 others, Environment and Land Court Case No 603 of 2017; [2022] eKLR*, Kemei, J held as follows:
- “
15. In the case at hand, in the absence of any title registered in the name of the plaintiff, the court is unable to hold that the plaintiff is the registered proprietor of the land. This is because the letter of allotment lapsed within 30 days and the same is of no legal consequences” [Emphasis added].
135. Arising from the foregoing analysis, my answer to issues number one and two is twofold. Firstly, in the absence of a certificate of lease/title to the suit property, the Plaintiff herein cannot purport to be the legal owner/ proprietor of the suit property.
136. Secondly, the letter of allotment which is being propagated by the Plaintiff herein cannot by itself anchor and/or bestow upon the Plaintiff title to the land. Barring repetition, the letter of allotment is and remains an offer and nothing more.



Issue Number 3

Whether the cancellation, revocation and/or withdrawal of the letter of allotment in favour of the Plaintiff by the 3rd Defendant was irregular, illegal and thus invalid or otherwise.

137. Other than the contention by the Plaintiff that same [Plaintiff] is the legal owner of the suit property, the Plaintiff has also sought for a declaration to the effect that the withdrawal/cancellation of the letter of allotment by the 3rd Defendant was unlawful and illegal.
138. To start with, it is important to point out that the suit property which the Plaintiff contends was duly allocated unto him is situated within the city of Nairobi. In this regard, if the suit property was available for allocation and or alienation; then it was incumbent upon the commissioner of land [now defunct] to advertise the availability of the suit property.
139. Additionally, once the suit property became available and was advertised by the commissioner of land [now defunct], thereafter the suit property would then be subjected to the statutory procedures outlines in terms of the provisions of Sections 12 and 13 of the Government *Land Act*, Chapter 280 [now repelled].
140. The provisions of Section 12 and 13 of GLA, stipulates as hereunder;
12. Leases of town plots shall, unless the President otherwise orders in any particular case or cases, be sold by auction.
 13. The place and time of sale shall be notified in the Gazette not less than four weeks nor more than three months before the day of sale, and the notice shall state—
 - (a) the number of plots and the situation and area of each plot;
 - (b) the upset price at which the lease of each plot will be sold; (c) the amount of survey fees and the cost of the deeds for each plot; (d) the term of the lease and the rent payable in respect of each plot; and (e) the building conditions and the special covenants, if any, to be inserted in the lease to be granted in respect of any plot: Provided that the lease of any plot may be withdrawn from sale by the Commissioner at any time before it is offered for sale.
141. The question that does arise is whether the purported allocation of the suit property to the Plaintiff complied with the law and if not what is the legal implication of the failure to comply with the relevant law.
142. To my mind, the suit property [if at all same was available] would only have been dealt with in accordance with the provisions of Sections 12 and 13 of GLA. There being no evidence that the provisions under reference were complied with, there is no gainsaying that the impugned letter of allotment that is being relied upon by the Plaintiff was null and void.
143. To this end, it is instructive to take cognizance of the decision in the case of *Tarabana Company Limited v Sehmi & 7 others* (Civil Appeal 463 of 2019) [2021] KECA 76 (KLR) (8 October 2021) (Judgment), where the Court of Appeal stated thus;

The issue then is whether the Appellant's title is protected by law. Section 23 of the Registration of Titles Act (RTA) now repealed, and adopted in Section 24 (1) (a) and (b) of the *Land Registration Act* 2012 (LRA) answers to it. Section 24 (1) (a)& (b) of the LRA provides:24. Subject to this Act—



- a. the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
 - b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
144. In view of the foregoing position, what comes to the fore is the effect that the letter of allotment under reference was invalid and void. Same could therefore not confer any legal rights and/ or interest[s] or at all.
145. Further and at any rate, there is no gainsaying that where an act is void it cannot generate any legal right or at all. Pertinently, it suffices to reference the decision in *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169 Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;
- “If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”
146. Premised on the foregoing exposition of the law, it is my humble albeit considered view that the impugned letter of allotment, which was ex-facie illegal and thus void did not even require withdrawal, cancelation or revocation.
147. Simply put, same was a nullity ab initio.
148. Secondly, though the Plaintiff contends that the withdrawal or cancellation thereof was illegal, there is no gainsaying that National Land Commission is indeed chargeable with the mandate to administer and manage public land. In terms of its mandate by dint of Article 67[2] of *the Constitution*, the Commission certainly had the mandate to rescind the letter of allotment.
149. To my mind, the letter by the commission which rescinded the impugned letter of allotment and which is the subject of complaint by the Plaintiff herein was taken intra vires the powers of the commission.
150. Arising from the foregoing, the contention by the Plaintiff that the 3rd Defendant assumed powers that it did not have in rescinding or revoking the letter of allotment is without legal basis.
151. Suffice it to state that the scope of the mandate of the National Land Commission to administer and manage public land and thus by extension, to superintend the manner in which public Land is alienated was elaborated by the Court of Appeal in the case of *Cordison International (K) Limited v Chairman National Land Commission & 44 others* [2019] eKLR, where the court stated;
- “ 30. Article 67 of *the Constitution* that establishes the National Land Commission gives it power to, inter alia, manage public land on behalf of the national and county governments. The suit land is public land as defined under Article 62(1) (a) of *the Constitution* and therefore vests in and is held by the County Government of Lamu in trust for the people resident in the County. Article 62 (2) of *the Constitution* provides that the land shall be administered on behalf of the County residents by the National Land Commission. Section



5 (1)(a) of the [National Land Commission Act](#) is also explicit that one of the functions of the National Land Commission is to manage public land on behalf of the national and county governments. Under section 5(2) of the Act the Commission may, “on behalf of, and with the consent of the national and county governments, alienate public land.”...

31. Section 12 of the [Land Act](#) grants the Commission authority to allocate public land on behalf of the national or county governments and section 14 of the Act specifies the steps that the Commission ought to take before it undertakes any such allocation. The Commission has to issue, publish or send a notice of action to the public and interested parties, at least thirty days before offering for allocation a tract or tracts of land.... It is therefore clear beyond any peradventure that it is the role of the Commission, and not a county government, to allocate public land. The allocation must however comply with the laid down constitutional and statutory procedure as stated above.”

152. Likewise, the Supreme Court of Kenya highlighted the scope and mandate of the Commission [National Land Commission] in the Matter of the National Land Commission [2015] eKLR, where the court stated thus:

“The [Land Act](#) defines “alienation” as the sale or other disposal of rights to land, while the NLC Act confers the power of alienation of public land upon the NLC. Thus, the disposal of such land can only be done by the Commission, with the consent of the National or County Government. The NLC, in effect, has been granted the power to sell or dispose of public land, on behalf of the National and County Governments. The National or County Government has to give consent, for such disposal.

(223) It may be inferred that, the power of alienation of public land is one of the ways through which the NLC administers such land. The requirement of consent to such a transaction, from the National or County Government, is certainly a check-and-balance relationship between the two State organs. The NLC’s function of monitoring the registration of all rights and interests in land, is another mechanism of checking the powers of the body responsible for registration.”

153. My reading of the two [2] decisions, which have been cited and referenced in the preceding paragraphs, drives me to the conclusion that in exercise of its constitutional mandate, National Land Commission is tasked with the function to rescind a letter of allotment and more particularly, where the issuance of the impugned letter of allotment did not comply with the due process of the law.

154. Finally, I beg to underscore that rescission/cancellation of a letter of allotment is separate and distinct from cancellation of a certificate of title. For good measure, once a certificate of title does issue, the only forum that can address the question of cancellation and thereafter undertake the cancellation [if and where apposite] is a court of law. [See Section 80 of the [Land Registration Act](#), 2012].

155. In a nutshell, my answer to issue number three [3] is twofold. Firstly, the impugned letter of allotment, namely, the letter of allotment dated the 3rd November 2011 was a nullity ab initio. Legally, it was void and thus non-existent in eyes of the law.

156. To this end, there was even no need to rescind it. Suffice it to reiterate the Doctrine of Ex-Nihilo nihil fit [Out of nothing comes nothing]



157. Secondly, I hold the humble view that the commission [NLC] was seized of the jurisdiction to rescind/ withdraw the impugned letter of allotment. Pertinently, the withdrawal of the impugned letter of allotment fell within the mandate of the commission to manage and administer land.

Issue Number 4

Whether the Plaintiff herein is entitled to an order for cancellation and/or revocation of the certificate of title issued in favour of the 1st Defendant.

158. The Plaintiff has also sought for an order for revocation and cancellation of the certificate of title that was issued in favour of the 1st Defendant. According to the Plaintiff, the 1st Defendant's lease in respect of the suit property expired in the year 2009.
159. Additionally, the Plaintiff has contended that upon the expiration of the 1st Defendant's lease to and in respect of the suit property, same [Plaintiff] was issued with a letter of allotment dated the 3rd November 2011.
160. Premised on the issuance of the letter of allotment under reference, the Plaintiff contended that the suit property was therefore not available to be registered in the name of the 1st Defendant. Consequently, the Plaintiff implores the court to find and hold that the certificate of title in favour of the 1st Defendant is illegal and unlawful.
161. Nevertheless, what the Plaintiff herein is not disclosing is that prior to the expiration of the 1st Defendant's lease to and in respect of the suit property, the 1st Defendant wrote to the commissioner of land and sought for renewal of the terms of the lease. [See letter dated the 28th October 2009 and which was produced as exhibit D1 on behalf of the 1st Defendant].
162. Additionally, it is also worthy to recall that arising from the 1st Defendant's application for renewal of the lease term, the designated authorities including the commissioner of lands signalled to the 1st Defendant that the lease term would be renewed.
163. Instructively, the Directorate of Survey issued a letter of no objection 12th January 2010; the city council of Nairobi also issued the approval for extension of the lease in favour of the 1st Defendant. Similarly, the Directorate of Physical Planning issued their letter of no objection dated the 5th January 2011.
164. What becomes apparent is to the effect that by the time, the Plaintiff was purporting to procure and obtain a letter of allotment in respect of the suit property, there was an ongoing process for the renewal of the lease in favour of the 1st Defendant.
165. To my mind, the 1st Defendant who was the holder of the lease whose terms was coming to an end, held pre-emptive rights. In any event, the relevant authorities had created a legitimate expectation that the lease in favour of the 1st Defendant would be renewed. Further and in addition, the process towards renewal was ongoing.
166. In the premises, can it be said that ultimate renewal of the lease in favour of the 1st Defendant was irregular, illegal and unlawful. Certainly, my answer is in the negative.
167. Other than the foregoing, can it be said that the certificate of title/lease issued in favour of the 1st Defendant lends itself to cancellation at the instance of the Plaintiff. Similarly, my answer is in the negative.



168. Notwithstanding the foregoing, it is not lost on the court that whilst dealing with issue number[s] 1 and 2 herein before, the court has found and held that the Plaintiff herein did not accrue any lawful or legal rights to the suit property. In this regard, the Plaintiff is thus divested of the standing to impeach the certificate of title issued in favour of the 1st Defendant.
169. Before departing from this issue, it is important to reiterate the holding in the case of Republic v National Land Commission & 5 others; CEC Land Housing and Physical Planning Uasin Gishu County & 3 others (Interested Parties); Ravindra Ratilal Taylor (Suing as the Trustee of Uasin Gishu Arts Society of Eldoret) & 5 others (Exparte) (Suing as the Trustees of Uasin Gishu Arts Society of Eldoret) (Judicial Review 09 of 2017 & 04 of 2016 (Consolidated)) [2022] KEELC 3 (KLR) (16 February 2022) (Judgment), where the court stated thus;
49. I have every conviction to hold, and I do hold, that a former holder of a Government leasehold title, who had complied with the terms of the lease, held a legitimate expectation that such lease would be renewed to him by the Commissioner of Lands. It is my considered view, that despite there not being any explicit provision in the GLA, concerning renewal of leases of developed town plots, such plots needed to be renewed to the previous leaseholder, unless the leaseholder had breached a fundamental term of the lease, or is no longer interested in its renewal.
50. In exercising his duty to renew such lease, the Commissioner of Lands would be exercising an administrative function. Any person acting in the exercise of administrative power has an obligation to act fairly and justly. That is what everyone expects of such person. Administrative power is not to be exercised capriciously, without regard to what is fair, just and proportionate. The Commissioner of Lands could not in the fair exercise of his administrative power, renew the lease to another person, for as I have laid out before, such action would break the legitimate expectation of the incumbent leaseholder. What would be fair, just and equitable in such circumstance would be to renew the lease in favour of the incumbent holder of the lease.”
170. For the reasons adverted to in the preceding paragraphs, I find no basis to warrant the revocation and/or cancellation of the 1st Defendant’s certificate of title over and in respect of the suit property. Suffices it to state that the said certificate of title was not only lawful but valid taking into account inter-alia the principle of legitimate expectation. [See *Kenya Revenue Authority v Export Trading Company Limited (Petition 20 of 2020)* [2022] KESC 31 (KLR) (17 June 2022) (Judgment)]

Issue Number 5

Whether the 1st Defendant is the lawful and legitimate proprietor of the suit property and if so; whether same is entitled to the requisite protection of the law.

171. It is common ground that the suit property belonged to and was registered in the name of the 1st Defendant. Furthermore, it was also conceded that the 1st Defendant actually demised the suit property or a portion thereof to the Plaintiff.
172. On the other hand, it is also worthy to recall that the lease term in favour of the 1st Defendant was scheduled to expire and indeed expired some time in the year 2009. Nevertheless, before the expiration of the lease term, the 1st Defendant made the requisite application towards the renewal of the lease.
173. Barring repetition, it is instructive to reiterate that the 1st Defendant wrote a letter dated the 28th October 2009 and wherein same sought for the renewal of the lease term in respect of L.R No’s 209/908 and 209/918, respectively.



174. Suffice it to state that the Application by and on behalf of the 1st Defendant went through the requisite processes and thereafter the 1st Defendant was issued with a certificate of title.
175. Pertinently, the fact that the 1st Defendant was issued with a certificate of title/lease is not in contest. Nevertheless, and for the avoidance of doubt, it is apposite to reproduce the evidence of DW1 whilst under cross examination by learned counsel for the 4th Defendant.
176. Same [DW1] stated thus;
- “I do confirm that I have certificates of title in respect of the two plots issued by the government of Kenya. The certificate of titles relates to L.R No. 209/908 and 209/918, which are the two properties before the court”.
177. To my mind, the 1st Defendant complied with the due process of the law in its endeavour to renew the lease in respect of the two properties, namely, L.R No’s 209/908 and 209/918, respectively. Further and in addition, the process pertaining to the renewal of the leases was concluded culminating into the issuance of the certificate of titles/leases.
178. Having duly complied with the law, and having procured the certificate[s] of title and there being no demonstrable fraud/illegality to vitiate the certificates of title, it is my finding and holding that the 1st Defendant is entitled to the protection under the law. [See Sections 24 and 25 of the [Land Registration Act](#), 2012].
179. Additionally, I beg to underscore that the 1st Defendant’s title and/or rights in respect of L.R No’s 209/908 and 209/918, respectively, find succour in the decision of the Court of Appeal in the case of Joseph N.K. Arap Ng’ok v Moijo Ole Keiwua & 4 others (Civil Application 60 of 1997) [1997] KECA 1 (KLR) (Civ) (17 October 1997) (Ruling), where the court stated thus;
- Section 23(1) of the Act gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.
- [See also the decision in Elizabeth Wambui Githinji & 29 others v Kenya Urban Roads Authority & 4 others [2019] eKLR]
180. In a nutshell, my answer to issue Number Five [5] herein is to the effect that the 1st Defendant is the lawful and legitimate proprietor of the suit property. Nevertheless, it is not lost on the court that the 1st and 2nd Defendant entered into a Deed of settlement which impacts on the ownership of the suit properties.
181. Consequently, even though I find and hold that the 1st Defendant is the lawful and legitimate owner of the suit property, this finding does not supersede the terms of the Deed of settlement which underpins the right of the 2nd Defendant in respect of the suit properties.



Issue Number 6

What orders, if any, ought to issue.

182. The Plaintiff herein had sought for various reliefs at the foot of the amended Plaint dated the 19th December 2016. Notably, the Plaintiff had sought for a declaration that same [Plaintiff] is the legal and/or beneficial owner of L.R No. 209/918.
183. However, whilst discussing issues number[s] 1 and 2, elsewhere herein before, the court found and held that in the absence of a certificate of title/lease issued under the relevant statute, the Plaintiff's claim to be the legal owner of the suit property was untenable.
184. Having found and held as much, I come to the conclusion that the Plaintiff herein is not entitled to the declaration of ownership either as sought or at all. In any event, such declaration cannot issue and/or be issued to one who is devoid of the requisite Certificate of Title.
185. Secondly, the Plaintiff herein also sought for a declaration that the landlord and tenant relationship that had hitherto existed between the 1st Defendant and himself [Plaintiff] terminated upon the expiry of the 1st Defendant's leasehold term and the subsequent allocation of the suit property to the Plaintiff.
186. My response to the prayer under reference is two- pronged. Firstly, there is the court order which was issued vide Nairobi HCC No. 439 of 2004 and wherein, the High court [Muga Apondi J] as he then was; ordered and directed that the Plaintiff shall continue to pay rents to the 1st and 2nd Defendants herein. The said order, remains in existence and was never set aside and/or varied.
187. I am alive to the submissions by and on behalf of the Plaintiff in terms of paragraph 9[a] to [h] at the foot of the submissions dated 4th November 2024. However, it is trite and established that a court of concurrent jurisdiction cannot superintend the orders of another court of concurrent jurisdiction. In this regard, it would be an absurdity for me to call for the file vide Nairobi HCC No. 439 of 2004 and interrogate the legality of the said orders either in the manner posited or at all.
188. Secondly, the question of the suit property having been allocated to the Plaintiff has already been addressed and determined elsewhere herein before. In this regard, I am afraid that the declaration that the landlord/tenant relationship terminated cannot issue in the manner sought.
189. On the other hand, the Plaintiff herein sought for an order of permanent injunction to issue as against the Defendants herein with a view to averting the alienation, sale and or disposition of the suit property. Nevertheless, it suffices to underscore that the court has found and held that the suit property lawfully belongs to the 1st Defendant.
190. The question that does arise is whether an order of permanent injunction can issue and/ or be issued as against the registered owner of the suit property?
191. My answer to the question posed in the preceding paragraph is in the negative. To this end, I find succour in the decision of the Court of Appeal in the case of Nguruman Limited versus Jan Bonde Nielsen & 2 others [2014] Eklr, where the court stated as hereunder;

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.

192. Additionally, the Plaintiff also sought for a declaration that the withdrawal of the letter of allotment dated the 3rd November 2011 by the 3rd Defendant was illegal null and void. Suffice it to posit that the



- court found and held that the impugned letter of allotment was issued in contravention of Section 12, 13 and 14 of the Government *Land Act*, Chapter 280, Laws of Kenya [now repealed].
193. Arising from the foregoing, the court returned a finding that the impugned letter of allotment was a nullity ab initio. The cancellation/revocation thereof was not necessary bearing in mind, the dictum in *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169.
 194. In a nutshell, there is no gainsaying that the declaration as pertains to the actions by the 3rd Defendant herein would not change the obtaining legal status attendant to the impugned letter of allotment.
 195. Simply put, the letter of allotment remained void and a nullity.
 196. Regarding the prayer for cancellation/revocation of the certificate of title issued in favour of the 1st Defendant, it suffices to underscore that the 1st Defendant is the lawful proprietor of the suit property. To this end, the rights of the 1st Defendant are duly protected under the law. [See the decision in *Moya Drift Farm Limited –versus- Theuri* (1973) EA 114 Pages 116-117].
 197. On the other hand, the 1st and 2nd Defendants have also sought for various reliefs at the foot of the counterclaim. Nevertheless, it is imperative to state that the reliefs sought by the 1st and 2nd Defendants are repetitive/ duplex in nature. In this regard, it is not legally tenable to grant both.
 198. Be that as it may, I beg to interrogate the reliefs sought by the 1st Defendant. In the first instance, the 1st Defendant has sought for loss of rental income from May 2013 to 3rd march 2018 in the sum of Kes.180, 000/= only.
 199. I have found and held that the 1st Defendant was and is the registered proprietor of the suit property. In this regard, the 1st Defendant was therefore entitled to rental income from the Plaintiff for the entire duration of his occupation of the suit property.
 200. There is no gainsaying that the Plaintiff herein continued to occupy and operate his business on the suit property up to and including the 3rd March 2018 when same [Plaintiff] was evicted. In this regard, there is no gainsaying that the Plaintiff was obligated to pay the rents at Kes.180, 000/= per month in the manner sought.
 201. Secondly, the 1st Defendant has also sought for loss of 10% increment on rental income from 2013 to date of judgment. Quite clearly, the Plaintiff was only in the suit property up to and including the 3rd March 2018 when same is reported [stated] to have been evicted.
 202. Arising from the foregoing, the loss of 10% yearly increment on rental income can only be reckoned and computed up to and including March 2018 and not otherwise. To do otherwise, will be tantamount to contravening the Doctrine of Departure, which binds parties to their pleading[s].
 203. Thirdly, the 1st Defendant has sought for general damages. It is not clear on what basis the 1st Defendant seeks recompense on account of general damages. Nevertheless, there is no gainsaying that whatever damages that the 1st Defendant may have accrued have been atoned for and indemnified vide an award on account of rental income.
 204. In my humble view, the claim for damages for trespass [if granted] would be tantamount to duplicity. Quite clearly, such a claim would amount to double jeopardy being exerted upon the Plaintiff.
 205. Conversely, such an order would be inequitable and shall also be tantamount to unjust enrichment on the part of the 1st Defendant. [See the decision of the court of appeal in *Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees* [2020] eKLR].



206. Fourthly, the 1st Defendant has sought for an order for vacant possession over and in respect of the suit property, namely, L.R No. 209/918. In my humble view, the 1st Defendant is seeking for an order of eviction. However, it is not lost on the court that the same 1st Defendant has posited that the Plaintiff was evicted in 2018.
207. For ease of appreciation, it is imperative to reproduce the contents of paragraph 32[A] of the amended statement of defence and counterclaim.
208. Same states as hereunder;
- “The Plaintiff was previously a tenant over the suit property known as L.R No. 209/918 Kenyatta Avenue [suit property] until 2018 when the Plaintiff was evicted to the suit property due to the failure to pay rents”.
209. What I hear the 1st Defendant to be saying is that the Plaintiff was evicted in 2018. If indeed the Plaintiff was evicted in 2018, then the question is for what purpose is the 1st Defendant seeking for further orders of eviction.
210. Be that as it may, and for whatever its worth, if the Plaintiff or his agents are still in occupation of the suit property, then it is apposite to evict same. Consequently and in this regard, the court reluctantly concede[s] to an order of eviction.

Final Disposition:

211. Flowing from the deliberations [details highlighted in the body of the judgment], it is crystal clear that the Plaintiff herein has neither established nor proven his claim/entitlement to the suit property. To this end, it is my finding that the Plaintiff's case is devoid of merits.
212. On the contrary, the 1st Defendant has ably demonstrated that same is the lawful proprietor/owner of the suit property. In this regard, there is no gainsaying that the 1st Defendant is entitled to recompense albeit on terms.
213. In the circumstances, the final orders that commend themselves to the Court are as hereunder:
- a. The Plaintiff's suit be and is hereby dismissed
 - b. The 1st Defendant's counterclaim be and is hereby allowed on the following terms;
 - i. The 1st Defendant be and is hereby awarded rental income in the sum of Kes10, 620, 000/= Only, [being rental income due w.e.f May 2013 to 3rd March 2018].
 - ii. Kes.864, 000/= Only, on account of 10% yearly increament on rental income from 2013 to March 2018.
 - iii. The Plaintiff herein [if same is still in occupation of the suit property] shall vacate and hand over the suit property to the 1st Defendant within 60 days from the date of the judgment.
 - iv. In default by the Plaintiff, either by himself agents and/or servants to comply with clause [iii] the 1st Defendant shall be at liberty to levy eviction without further reference to the court. In this regard, the deputy registrar of the court shall issue the requisite eviction order.



- v. In the event of necessity to involve the police in the enforcement of the eviction order, the 1st Defendant and/or its nominated auctioneers shall comply with the provisions of Rule 9 of the Auctioneers Rules 1997.
 - vi. The award in terms of clauses [i] and [ii] hereof shall attract interest at court rates from 2018 until payment in full.
 - vii. Costs of the suit and the counterclaim be and are hereby awarded to the 1st and 2nd Defendants/counter-claimers. Same to be taxed in the conventional manner.
 - viii. Any other order not expressly granted is hereby declined.
- c. For the avoidance of doubt, the counterclaim by and on behalf of the 2nd Defendant, which replicated the counterclaim by the 1st Defendant is hereby declined.
 - d. Nevertheless, there is no gainsaying that the award in favour of the 1st Defendant/counter-claimers shall be subject to the Deed of settlement between the 1st and 2nd Defendants respectively.

214. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JANUARY 2025

OGUTTU MBOYA

JUDGE

In the presence of:

Benson – court Assistant.

Mr. Neville Amollo and Mr. Obuli for the Plaintiff

Ms. Kariuki for the 1st Defendant/Counter-claimers

Mr. Kago for the 2nd Defendant/Counter-claimers

Mr. Allan Kamu [Principal Litigation Counsel] for the 4th Defendant

N/A for the 3rd Defendant.

