



REPUBLIC OF KENYA



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**Irungu v Odhiambo (Environment & Land Case 40 of 2013)  
[2023] KEELC 16775 (KLR) (13 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 16775 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 40 OF 2013**

**EO OBAGA, J**

**APRIL 13, 2023**

**BETWEEN**

**BERNARD KAMANU IRUNGU ..... PLAINTIFF**

**AND**

**GORDON ODHIAMBO ..... DEFENDANT**

**JUDGMENT**

**Introduction**

1. The plaintiff filed this suit against the defendant in which he sought the following reliefs:-
  - a. A declaration that the plaintiff is the lawful owner of plot No. Eldoret 17/96/81 sub plot L and the defendant is a trespasser thereon.
  - b. A permanent injunction restraining the defendant from trespassing into the plot No. Eldoret 17/96/81 sub plot L, Shauri Yako Estate, Eldoret, constructing structures thereon, fencing, occupying, or in any other way, interfering with the plaintiffs quiet possession thereof.
  - c. An eviction order for removal of all structures presently constructed on the plot No. Eldoret 17/96/81 sub plot L Shauri Yako Estate, Eldoret.
  - d. Costs and interests.
2. The dispute in this case relates to two allotment letters which were given on the same day by the Town Clerk of the defunct municipal council of Eldoret. The plaintiff was allotted Residential Plot No. Eldoret 17/96/81 sub plot L measuring 0.13 hectares. The defendant was allotted Residential Plot PDP No. 17/96/65 – sub plot No. 11 zone ‘G’ measuring 0.0325 hectares. Both allotment letters were given on 16/2/1997 under file reference No. EMC/TD/8/A.



3. Before this case could be heard, the Advocates for the parties agreed that a valuer goes to the ground to ascertain the position on the ground. When the valuer went to the Lands office to obtain necessary documents, it turned out that the plots had not been registered. The valuer was advised to go to the municipal council of Eldoret and obtain documents pertaining to the allocation.
4. The advocates for the parties came back to court where they explained the judge about what had transpired. The judge then directed the town clerk to go to the ground and ascertain the position.
5. As per the court order, the clerk to the municipal council of Eldoret visited the ground and prepared a report dated 18/4/2013 which showed that the plot in issue belonged to the defendant who had developed it.
6. The plaintiff's counsel on seeing the report asked the court to give him time to go and consult the plaintiff. The plaintiff's advocate later came and filed a letter dated 10/5/2013 which showed that the plot belonged to the plaintiff. This prompted the defendant's counsel to ask the court that the County Physical Planning Officer goes to the ground and file a report.
7. The County Land Physical Planning officer went to the ground and wrote a letter dated 25/6/2013 addressed to the plaintiff's lawyer in which she stated that the Defendant's land was actually in zone 'B' and that the defendant's allotment was based on PDP ELD/17/96/65A. She further stated that the defendant had constructed on plot L belonging to the plaintiff.
8. Another report dated 1/7/2013 was filed in court in which one Mr. C. K. Chesire found that the plaintiff was owner of plot L and that plot 11 in Zone G did not exist on the ground. When this report was brought to the attention of the judge, the judge observed that this report had contradicted the previous reports and that the report were irreconcilable. He directed that the case proceeds to hearing on merit.

#### **Plaintiff's case;**

9. The plaintiff testified that he was allotted Residential Plot No. Eld. 17/96/81 sub plot L measuring 0.13 hectares on 16/12/1997. He paid Kshs 32,000/= as required in the letter of allotment. The payment was made on 15/1/1998.
10. In the year 2012, he found someone building on his plot. He went to his lawyer who wrote a demand letter. When he filed a suit against the defendant, the defendant claimed that he was the owner of the plot under Eldoret 17/96/65 sub plot 11 zone 'G'. When he complained to the municipal council of Eldoret, a letter was written confirming that he was the owner of the plot Eld. 17/96/81 sub plot L.
11. The plaintiff called PW2 Cyprian Kangogo Chesire who confirmed that he is the one who wrote a letter dated 1/7/2013 in response to the plaintiff's lawyer's letter of 5/6/2013. According to this witness, zone G did not appear on the PDP which the plaintiff had been given.

#### **Defendant's case**

12. The defendant testified that he was allotted Residential plot PDP No. 17/96/65 sub plot No. 11 zone 'G' on 16/2/1997. He paid Kshs 32,000/= as per the requirements in the letter of allotment. He further testified that he has been paying rates for his plot. He claimed that the documents held by the plaintiff were manufactured.



### **Analysis and determination;**

13. The parties were directed to file written submissions on 4/10/.2022. The plaintiff was to file and serve submissions within 14 days. The defendant was to file written submissions within 14 days of being served. As at 19/12/2022, the parties had not filed submissions. The plaintiff's advocate prayed for 14 days to file and serve submissions. The defendant's advocates undertook to file submissions once served. I fixed the matter for mention on 15/2/2023. Come 15/2/2023, there was no appearance by either the plaintiff's counsel or the defendant's counsel and no submissions had been filed. The court set down the case for judgment on 13/4/2023 with directions that judgement notice be issued by court. As at 30/3/2023 when I was writing this judgement, no submissions had been filed by either the plaintiff or defendant and if any were filed, then they are not in the file.
14. I have carefully considered the evidence adduced by the Plaintiff as well as that of the Defendant. The main issue for determination is as to whose letter of allotment is genuine. The other issue is whether the plaintiff is entitled to the reliefs in the plaint.
15. The suit property is not registered. This court has to fall on evidence from the defunct municipal council of Eldoret whose successor is the County Government of Uasin Gishu. The plaintiff relies on an allotment letter in respect of Residential Plot No Eld. 17/96/81 sub plot L measuring 0.13 hectares. On the other hand, the defendant relies on letter of allotment in respect of Residential Plot No 11 Zone 'G' measuring 0.325 hectares.
16. The plaintiff claims to have paid for his plot vide receipt dated 15/1/1998 where he paid 32,000/= in cash. The defendant paid for his plot in two instalments vide receipt dated 31/12/2007 for Kshs 3,000/= and another receipt date 1/7/2008 for Kshs 29,000/=
17. A look at the receipt which was issued to the plaintiff shows that he paid for Residential plot PDP No Eld. 17/96/81 sub plot L zone 'G'. His evidence in chief was that his plot was not in zone 'G' as according to him, zone 'G' was not reflected n the PDP which he was given. When the issue of zone 'G' which appeared on his receipt was put to him during cross-examination and he was asked why zone 'G' was not appearing on his allotment letter, he said that that was due to wear and tear.
18. The plaintiff produced his letter of allotment as plaintiff exhibit 1. The letter was in very good condition and there was no evidence of the alleged wear and tear. His allotment had no zone number. On the other hand, the Defendant produced a letter of allotment which contained a PDP number complete with plot No and zone area.
19. The plaintiff had complained to the Municipal council of Eldoret about interference with his plot by the Defendant. In a letter dated 23/3/2012, the defendant was informed that plot No. PDP/17/96/65/ 11 belonged to him. This is according to the records held at the municipal council of Eldoret. This letter was copied to the Plaintiff.
20. The municipal council of Eldoret did not have the letter of allotment which the plaintiff claimed to have been given from their office. When the advocate for the parties agreed that the town clerk goes to the ground to ascertain who was the owner of the plot, a court order to that effect was made on 19/3/2013. A report dated 18/4/2013 was filed in court. This report was clear that plot No PDP Eld. 17/96/65 sub plot 11 zone 'G' belonged to the defendant who had developed it in accordance with approvals from the Municipal council of Eldoret. The plot was said to be between plot 10 and the main sewer line.
21. The PDP which was given to the defendant and which was produced by the plaintiff as exhibit 7(a) agrees with the findings of the report of 18/4/2013. This is unlike the PDP which the plaintiff



produced which does not show the position of the sewer line. The plaintiff's PDP simply describes the 50-meter road as by pass whereas the PDP of the plaintiff has the main sewer line and the 50-meter road clearly marked as reserved for by pass.

22. When the plaintiff's advocate saw the report of 18/4/2013, he sought for time to consult the plaintiff. When he came back to court on 3/6/2013, the Plaintiffs' lawyer filed a report dated 10/5/2013 which showed that Residential Plot No. Eld/17/96/81 sub-plot No. L belonged to the plaintiff. This letter was in response to a request by the plaintiff's advocate through letter dated 6/5/2013. There was no court order asking for such a report as already there was a report dated 18/4/2013 from the same office which had determined that the land belonged to the defendant. The judge in granting the plaintiff's counsel time to consult with his client was categorical that he was only allowing time for consultation and nothing more as there was a report on record.
23. It is this report which prompted the judge to order the County Physical Planning officer to prepare a report. This report was tabled before court on 11/7/2013. The report contradicted the one of 18/4/2013. It is at this time that the judge ordered that the case proceeds to hearing on merits.
24. In a clear scheme to manipulate the court process, the plaintiff obtained another report dated 1/7/2013 which contradicted the official report of 18/4/2013. There was no court order calling for this report. The report however found its way into the court file and was produced as exhibit 6. The person who prepared the report of 10/5/2013 and the one of 1/7/2013 is C. K. Chesire who testified in favour of the plaintiff. This witness is the one who produced the report of 25/6/2013 which contradicted the one of 18/4/2013.
25. The report of 25/6/2013 is not worth the paper it is written on. The report introduced a completely different PDP in respect of the defendant. The PDP was now changed to read ELD/17/96/65A. A new zone for it was also introduced as zone 'B'. All through, communication from municipal council of Eldoret were referring to PDP ELD/17/96/65. The 'A' was inserted by hand in the PDP which was produced by the Plaintiff as exhibit 7(a).
26. It is therefore clear that the plaintiff's allotment letter was not genuine. His evidence was not credible. PW2 Cyprian Kangogo Chesire was too not a credible witness. Whereas he claimed at one point that he did not accompany Ms. Rabongo to the site, he quickly forgot and said that he had visited the site. This is the same person who twice prepared reports contradicting a report dated 18/4/2013 from the same office.

### **Disposition**

27. From the above analysis, it is clear that the plaintiff has failed to prove his case on a balance of probabilities. The plaintiff's suit is hereby dismissed with costs to the defendant.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 13<sup>TH</sup> DAY OF APRIL, 2023.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Kamau for Plaintiff.

Court Assistant –Kimuthia

