



**Amza Limited v Mwangi & 2 others (Environment & Land Case
50 of 2021) [2023] KEELC 22225 (KLR) (14 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22225 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 50 OF 2021
A OMBWAYO, J
DECEMBER 14, 2023**

BETWEEN

AMZA LIMITED PLAINTIFF

AND

DANIEL WAI THANJI MWANGI 1ST DEFENDANT

EQUITY BANK (KENYA) LIMITED 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

JUDGMENT

1. Amza Limited, hereinafter referred to as plaintiff has come to court against Daniel Waithanji Mwangi, Equity Bank K Limited and the Chief Land Registrar contending that on the 8th June, 1999 the Government of Kenya on behalf of Nakuru Municipality by a Letter of Allotment allocated to him a parcel of land in Reference Number.30884/XLVIII and contained attached Plan No R 7/96/35.
2. The Plaintiff as a pre-requisite to the acceptance of Letter of Allotment, confirmed the acceptance in dated 5th June 2002 and paid the requisite fees. The Plaintiff duly complied with the terms of the Letter of Allotment and survey was carried out and in the year 2002/ it was issued with RIM to facilitate the preparation and issuance of Title Deed
3. In the Month of September 2018 when the Plaintiff followed up at the Ministry of Lands and Physical Land Registry at Nairobi to register the parcel of land in its name, it was informed the file was missing and advised to visit the Land's Registry at Nakuru and conduct a search. That upon conducting a search and issuance of Certificate of Search, the Plaintiff was shocked to learn that the record shows the 1st Defendant herein as the registered owner of the Plot.
4. The Plaintiff further states that the 1st Defendant has fraudulently caused the suit land to be registered in his name in Title Number Nakuru/Municipality Block 1/2196 and a Certificate of Lease issued



thereon on the 30th June, 2005. The plaintiff contends that the 1st Defendant later charged the suit plot to the 2nd Defendant and the said title has been registered in favour of the 2nd Defendant herein. This charge of the suit property in favour of the 2nd Defendant is null and void as it is supported by a bad title.

5. This development took the Plaintiff by surprise as he has never to the best of her knowledge signed any agreement for sale and transfer document in favor of any party in respect of the suit property. The Plaintiff was at a loss on how its property could have been fraudulently transferred to third parties without his knowledge or consent.
6. The Plaintiff reiterates that she is the beneficial owner of the suit property which the 1st and 2nd Defendants by fraud illegality, forgery and collusion purports to have acquired by the 1st Defendant and charged to the 2nd Defendant in a manner prejudicial to the Plaintiff's right and interests. The plaintiff has listed the particulars of fraud on the part of the defendant. The plaintiff avers that he is the beneficial owner of the property after being issued with the allotment letter by the Commissioner of lands.
7. The plaintiff prays for judgment against the defendant in terms of a declaration that the Plaintiff is the bona fide proprietor of the suit property and an order that the 1st Defendant's alleged title to Title Number Nakuru/Municipality Block 1/2196 be cancelled by the 3rd Defendant and the Plaintiff be registered as the owner of the said property and an order to evict the Defendants, their agents, servants and/or any other persons claiming under them from the suit property. A declaration that the charge in favor of the 2nd Defendant was bas bad title and the same be discharged unconditionally. The plaintiff prays for a permanent injunction restraining the Defendants their servants or any other unauthorized persons from interfering with ownership and possession of the suit property.
8. Lastly, the plaintiff prays for a mandatory injunction directing the 1st Defendant, his agents, servants and/or any other persons claiming under him to remove himself and any buildings, structures and construction materials that they may have deposited on the suit property within fourteen (14) days of the making of the said order and if they fail to do so, the Plaintiff be at liberty to remove them at the 1st Defendant's expense. Ultimately, the plaintiff prays for General damages for trespass on the suit property plus costs of this suit.
9. The 1st defendant on his part denies the allegations in the plaint and contends that he is a stranger to the contents of paragraph 5 and 6 of the plaint and puts the plaintiff to strict proof thereof. Further to the above, the 1st defendant denies that the plaintiff paid a sum of Kshs 31,705/= as per the letter of allotment dated 8th June 1999.
10. The 1st defendant denies the plaintiff complied with the terms of the letter of allotment dated 8th June 1999 and contends that the survey that was carried out in the year 2002 and the Registry index map issued thereon is null and void given the terms of the letter of allotment were not fulfilled as stipulated in the said letter.
11. The 1st defendant avers that the plaintiff having failed to meet the contents of the letter of allotment led to the plot being allocated to a different deserving Kenya. The 1st defendant confirms being the duly registered owner of parcel title number Nakuru Municipality Block1/2196 vide a certificate of lease issued on the 30th June 2005.
12. Further the 1st defendant avers that being the duly registered owner of title Nakuru Municipality Block1/2196 he had all the rights to charge the property and get credit facilities from the 2nd defendant.



13. The 1st defendant avers that the charge over title number Nakuru/Municipality Block1/1296 is legal and supported by a recognized land regime and that the plaintiff had no rights to transfer the property to any third party having forfeited its ownership right once it failed to meet the terms in the letter of allotment. In response to paragraph 13 of the plaint the 1st defendant denies having fraudulently transferred the land to himself and puts the plaintiff to strict proof thereon. The 1st defendant in response to paragraph 14 of the plaint avers the plaintiff's rights were extinguished by non-compliance with the terms in the letter of allotment.
14. In the counter claim the 1st defendant avers that he is the owner of the suit property and that the plaintiff's title has been extinguished. He prays for a declaration that title number Nakuru Municipality Block 1/2196 belongs to the 1st defendant and that judgment be entered for the 1st defendant and the suit be dismissed with costs.
15. When the matter came up for hearing, Agnes Moraa Onyancha, the Director of the plaintiff relied on her statement dated 8th June 2021 and filed on 14th June 2021 which was adopted as her evidence in chief. The gist of the plaintiff's evidence is that on 8th June, 1999, the Government of Kenya on behalf of Nakuru Municipality by a Letter of Allotment allocated to the Plaintiff a parcel of land in Reference Number: 30884/XLVIII and contained attached Plan No R7/96/35.
16. The Plaintiff as a pre-requisite to the acceptance of Letter of Allotment, confirmed the acceptance in a letter dated 5th June, 2002 and paid the requisite total charges of Kshs through Standard Chartered Bank Cheque No O/C3599125210. The Plaintiff duly complied with the terms of the Letter of Allotment and survey was carried out and in the year 2002, he was issued with RIM to facilitate the preparation and issuance of Title Deed.
17. In the month of September 2002, when the Plaintiff followed up at the Ministry of Lands and Physical Land Registry at Nairobi to register the parcel of land in his name, he was informed the file was missing and advised to visit the Land's Registry. That upon conducting a search and issuance of Certificate of Search, the Plaintiff was shocked to learn that the record shows the 1st Defendant herein as the registered owner of the Plot.
18. The Plaintiff gave evidence that the 1st Defendant has fraudulently caused the suit land to be registered in his name in Title Number Nakuru/Municipality Block 1/2196 and a certificate of Lease issued thereon on the 30th June, 2005.
19. The 1st Defendant later charged the suit plot to the 2nd Defendant and the said title has being registered in favor of the 2nd Defendant herein. This charge of the suit property in favor of the 2nd Defendant is null and void as it is supported by a bad title. This development took the Plaintiff by surprise as he has never to the best of his knowledge signed any agreement for sale and transfer document in favor of any party in respect of the suit property. The Plaintiff further states the 1st Defendant has never paid any consideration whatsoever for the purchase of the said plot. The Plaintiff was at a loss on how his property could have been fraudulently transferred to third parties without his knowledge or consent.
20. On cross examination by Nancy Njoroge learned counsel for the 1st defendant, she states that the plaintiff was allocated land in 1999 and paid in 2002. She took 2 years to pay and fenced the property with barbed wire. The land was surveyed after the issue of allotment. He discovered that a lease was issued in 2018.
21. The 1st defendant on his part testified that he bought the land from Tabarin Hauliers vide agreement dated 30th May 2005. The transfer was done legally. He obtained a certificate of lease. He constructed a building of four floors. He took a loan from the bank for the above developments. On cross



- examination he states that he saw the letter of allotment dated 8th June 1999. He agreed that the transfer does not have Tabarin Hauliers Ltd as the seller. The transferors were Jackson and Dina and that there is no mention of Tabarin Hauliers Ltd. The receipt does not show Tabarin Hauliers Ltd as the person who paid but David W Mwangi.
22. The plaintiffs' counsel submits that the plaintiff gave authority to sue and therefore the case is properly before court. The plaintiff's counsel submits that they have complied with order 4 rule 1(4) of the [Civil Procedure Rules 2010](#) which provides that where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.
 23. On the issue as to whether the plaintiff is the registered owner the plaintiffs counsel submits that the plaintiff was issued with an allotment letter on 8th June 1999 and upon receiving the letter of allotment the plaintiff accepted the same and paid a sum of Kshs 31,705 to the commissioner of lands. He paid stamp duty and a Registry Index Map was issued. He complied with requirements only to find that the 1st defendant had been issued with a certificate of lease. The plaintiff submits that no evidence was given by the defendant that the letter of allotment issued to the plaintiff was cancelled.
 24. The plaintiff submits that the 1st defendant did not regularly acquire the property because though the property was registered in the names of Tabarin Hauliers Limited, the transfer of lease was executed by Jackson Kipngetch Tuitoel and Dinah Jepsinde Tanui. The application for consent to transfer was not made by Tabarin Hauliers Limited but by Jackson and Dinah.
 25. The plaintiff further argues that the 1st defendant is not protected by Article 40 of the [Constitution](#) of Kenya 2010 and section 26 of the [Land Registration Act](#) No 3 of 2012.
 26. The 1st defendant on his part submits that the plaintiff was issued with a letter of allotment on 8th June 1999 but never fulfilled the terms stipulated in the allotment letter. The acceptance letter was made three years later on 5th June 2002 instead of the thirty days prescribed by the letter of allotment and that a letter of allotment does not confer title but is an offer. According to counsel the letter of allotment expired upon failure to meet the terms and conditions therein. Counsel submits that the plaintiff has not proved fraud and therefore the suit should be dismissed with costs.
 27. I have considered the pleadings, evidence and submissions on record and do find the issue ripe for determination is who is entitled to the property. This court finds the facts of the case to be that the plaintiff was issued with the letter of allotment on 8th May 1999. The allotment was in respect of un-surveyed Commercial plot in Nakuru Municipality. The allotment was made by the Commissioner of Lands on behalf of the County Council of Nakuru.
 28. A Part Development Plan of the area was annexed to the allotment letter. The plaintiff was required to make an acceptance within 30 days of the offer. He was required to make payment of Kshs 31,705 upon acceptance. The acceptance was made on 5th June 2002 and a payment of Kshs 31,705 was made on 2nd August 2002. On 12th November 2002 the plaintiff paid Land Rent of Kshs 19,946. The plaintiff paid Kshs 72,000 on 19th March 2015 for stamp duty only to find that the 1st defendant had been registered as the proprietor of the land vide an instrument of transfer.
 29. The 1st defendant purchased the property from Tabarin Hauliers Limited vide agreement of sale dated 30th May 2005. There is no evidence as to how the said Tabarin Company Limited, that was not made a party to these proceedings, obtained the title. Moreover, the company did not execute the transfer of property.
 30. Though the parcel of land was registered in the name of Tabarin Co Ltd, the transfer instrument to the 1st defendant does not bear the names of Tabarin Co. Ltd as transferor but the transferors are



named as Jackson Kipngetich Tuitoek and Dinah Jepsaide Tanui who had no authority whatsoever to transfer the property on behalf of Tabarin. The agreement of sale does not mention Jackson Kipngetich Tuitoek and Dinah Jepsaide Tanui. A careful perusal of the white card shows a lacuna in the entries numbers 1, 2 and 3 that depict how the property was transferred from Tabarin Hauliers Ltd to Jackson and Dinah.

31. This court finds that Tabarin Co. Ltd was likely a body created to illegally take away the property from the plaintiff and hand it to the 2nd defendant because there is no evidence as to how the Directors of Tabarin Co. Ltd. Transferred the land to themselves before transferring to the 1st defendant.
32. In any event there is no allotment letter issued to Tabarin Co Ltd. Once an allotment letter is issued, the process of allocation to deemed to have commenced and unless the same is revoked by the Commissioner of Lands with due process, the same confers rights to the allottee upon acceptance and payment of the allotment fees. Upon meeting the conditions of the allotment letter, the allottee acquires absolute rights in the property and the rest becomes a process of conferring titles to property to the allottee. Any person who purports to obtain title to the property other than the allottee without revocation of allotment letter and without issuance of a new allotment letter obtains title without due process unlawfully and un-procedurally.
33. The plaintiff having obtained the allotment letter accepted the same though belatedly, paid the requisite fees that was accepted by the commissioner of lands, acquired rights in the property.
34. I do agree with the dictum in the case of *Rukaya Ali Mohamed v David Gikonyo Nambachia & another* Kisumu HCCA 9/2004 the Judge held that;

“once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest”.
35. Though the 1st defendant is the registered owner. I do find that the title was acquired unprocedurally because at the time the same was registered in the name of Tabarin Co Ltd and allotment letter had been issued to the plaintiff and he had already paid the acceptance fees to the Commissioner of Lands.
36. Section 26(1) of the *Land Registration Act* provides for Certificate of title to be held as conclusive evidence of proprietorship. Thus:-
 - (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.



37. The Court of Appeal in the case of *Munyu Maina v Hiram Gathiba Maina* [2013] eKLR, held as follows:-

“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.”

38. Section 80 (1) of the *Land Registration Act* provides that:-

“Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

39. The plaintiff having been issued with an allotment letter and having paid the requisite fees, the property was not available for allocation to another person and therefore the 1st defendant could not obtain title in the same property. The upshot of the above is that the plaintiff has proved his case on a balance of probabilities and I do grant judgment for the plaintiff against the defendant in terms of a declaration that the Plaintiff is the bona fide proprietor of the suit property and an order that the 1st Defendant’s alleged title to Title Number Nakuru/Municipality Block 1/2196 be cancelled by the 3rd Defendant and the Plaintiff be registered as the owner of the said property. The court issues a declaration that the charge in favor of the 2nd Defendant was bad in law and the same is discharged unconditionally.

40. Lastly, the court grants a mandatory injunction directing the 1st Defendant, his agents, servants and/or any other persons claiming under him to remove himself and any buildings, structures and construction materials that they may have deposited on the suit property within ninety (90) days of the making of this order and if they fail to do so, the Plaintiff be at liberty to remove them at the 1st Defendant’s expense after the expiry of the period of 90 days by eviction of the said Defendants, their agents, servants and/or any other persons claiming under them from the suit property. The counter claim is dismissed. Costs of the suit to the plaintiff.

JUDGMENT DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14TH DAY OF DECEMBER 2023.

A. O. OMBWAYO

JUDGE

