



**Misoi v Jepngetich & 2 others (Environment & Land Case 692 of 2012)  
[2023] KEELC 22358 (KLR) (13 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22358 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 692 OF 2012  
JM ONYANGO, J  
DECEMBER 13, 2023**

**BETWEEN**

**HARRISON KIPTOO MISOI ..... PLAINTIFF**

**AND**

**MACRINE JEPNGETICH ..... 1<sup>ST</sup> DEFENDANT**

**SETTLEMENT FUND TRUSTEES ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff instituted this suit vide a Complaint dated 8<sup>th</sup> March, 2011 which was subsequently amended on 10<sup>th</sup> May, 2011. In the Amended Complaint, the Plaintiff avers that sometime in 1978, the 2<sup>nd</sup> defendant allotted him all that parcel of land known as Uasin Gishu Kahungura/423. The plaintiff then took possession of the suit property and he has been in occupation thereof since then to date.
2. He further avers that sometime in 2004, the District Land Adjudication and Settlement Officer, Uasin Gishu purported to take away the suit property from the Plaintiff and fraudulently allocated it to the 1st defendant. The plaintiff has enumerated the particulars of fraud in paragraph 9 of the Complaint. The Plaintiff therefore seeks the following reliefs against the Defendants:
  - a. A permanent injunction restraining the defendants from entering, dealing in leasing and removing the plaintiff, farming, wasting, damaging, alienating or in any way dealing with all that property known as Uasin Gishu Kahungura/423.
  - b. An order substituting the name of the first defendant for that of the Plaintiff in both the title and the register and cancelling the said title or in the alternative, a declaration do issue that the first defendant holds the said title in trust for the Plaintiff.
  - c. Costs of this suit.



- d. Any other or further relief that the honourable court may deem fit to grant.
3. In her undated Statement of Defence filed in court on 27<sup>th</sup> April, 2011, the 1<sup>st</sup> Defendant denies the Plaintiff's claim and avers that she was allotted the suit property on 9<sup>th</sup> October, 2002 on condition that she pays all the requisite charges, fees, costs and outgoings which she duly paid. It is her averment that she was subsequently shown the boundaries of the suit property which was vacant at the time. She avers that if the plaintiff was allocated the suit property in 1978, he failed to pay the requisite fees and take possession thereof hence he lost all factual, equitable and legal rights to the suit property.
  4. The 1<sup>st</sup> Defendant denies the allegations of fraud and corruption attributed to her and states that none of the parties to the suit are responsible for any wrong doing. She denies that there is any justification for her title to be cancelled as she is the first registered owner of the suit property.
  5. In their joint Statement of Defence dated 10<sup>th</sup> May, 2003, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants admitted that the plaintiff was allotted the suit property vide an allotment letter dated 11<sup>th</sup> April, 1984. The plaintiff thereafter paid the 10% deposit of Kshs.625 and he was issued with a receipt. It is their averment that the plaintiff however failed to meet the conditions in the letter of allotment which include paying such amounts as he was requested to pay, residing on the suit property, using the suit property for agricultural purposes and cultivating at least one acre of arable land as well as erecting a dwelling house. They further aver that in view of the said breaches and based on the ground report dated 18<sup>th</sup> February, 2002, the suit property was re-allocated to the 1<sup>st</sup> defendant vide an offer letter dated 9<sup>th</sup> October, 2002. She then accepted the offer, paid all the requisite charges and the property was discharged after which it was transferred to her.
  6. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants deny the allegations of fraud contained in paragraph 9 of the Plaintiff and aver that the 1<sup>st</sup> defendant was lawfully issued with a title deed.

### **The Evidence**

7. After some considerable delay, the hearing finally commenced before Justice Ombwayo on 20<sup>th</sup> July, 2017 when the plaintiff testified as PW1. He told the court that he was issued with a letter of allotment dated 19<sup>th</sup> May, 1978 by the Settlement Fund Trustees. He produced the said letter as plaintiff's exhibit 1. Although the date on the copy of the letter on record is not visible, the proceedings show that the original letter was shown to the judge after which it was returned to the plaintiff.
8. The plaintiff testified that he subsequently paid the sum of Kshs.625 and he was issued with a receipt dated 11<sup>th</sup> April, 1984 which he produced as plaintiff's Exhibit 2. He subsequently made some payments in respect of rates and he was issued with receipts which he produced as Plaintiff's exhibits 3(a), (b) and (c). It was the plaintiff's further testimony that he fenced the land and started farming thereon. He planted trees and Napier grass and he keeps some livestock. He stated that he constructed a house on the land and he had been living on the land since 1978.
9. It was the Plaintiff's testimony that he had never been requested to pay any additional amount nor was he given any notice to vacate the land but his land had been grabbed by the 1<sup>st</sup> Defendant who had been issued with a title deed.
10. The plaintiff called two witnesses. Joseph Peter Cheruiyot testified as PW 2. He relied on his witness statement dated 17<sup>th</sup> December, 2012. He told the court that he was the plaintiff's neighbor at Kahungura Settlement Scheme. He testified that the land was initially known as Sukura but it was later renamed as Kahungura.



11. Joyline Chelimo Mutai who testified as PW3 stated that she was the plaintiff's daughter and she was born on the suit property in 1980. She told the court that her mother was buried on the suit property in 1982. She said the land belonged to her father.
12. On her part, Macrine Jepngetich, the 1<sup>st</sup> Defendant testified as the sole witness for her case. She testified that she was employed in the Department of Social Protection, Ministry of Labour and Social Protection. She told the court that she applied for land to the Director, Land Adjudication and Settlement vide a letter dated 14.1.2002. She was subsequently issued with a letter of offer dated 9<sup>th</sup> October, 2002 after which she accepted the offer and made the necessary payments. She produced the letter of offer, letter of acceptance and receipts as 1<sup>st</sup> Defendant's exhibits 2, 3 4(a) and (b). She also produced a letter dated 4<sup>th</sup> March, 2003 (DEX 5) indicating that she had been allocated the suit property. The suit property was then discharged and transferred to her on 20<sup>th</sup> July, 2004. She produced the Discharge of Charge, Transfer instrument and title deed as Defendant's exhibits 6, 7 and 8.
13. The 1<sup>st</sup> Defendant testified that she took possession of the suit property but she could not use it as the neighbours had fenced their land and encroached on her land. She sought the intervention of the District Commissioner to no avail. She told the court that she was prevented from developing the plot by the plaintiff's nephews.
14. Upon being cross-examined by Dr. Chebii she stated that she did not apply for a specific plot. She testified that when she visited the suit property, she found it vacant although she claimed that someone put up a small structure on it after she had visited it. She later learnt that the plot had been allocated to the plaintiff.
15. On being cross-examined by Mr. Odongo she stated that the government established settlement schemes to assist landless people and those without means. She confirmed that when she applied for the plot she was a civil servant working with the Ministry of Labour. She stated that the Settlement Officer advised her to apply for plot No. 423. She was issued with a an offer letter dated 9<sup>th</sup> October, 2002 which required her to pay a 10% deposit before she could be documented. She produced receipts to show that she paid Kshs.5,000 for outright purchase of plot. No. 423 on 21<sup>st</sup> November, 2002 and another amount of Kshs.12, 450 for outright purchase of the same plot on 29<sup>th</sup> April, 2003. She then paid Kshs.1515 for the transfer on 20<sup>th</sup> July, 2004.
16. Dan Mbuvi Ndonge Kalamba, the County Land Adjudication and Settlement Officer, Machakos County testified as DW 3. He told the court that he worked at the Uasin Gishu Land Adjudication Office between 2015 and April 2023 and he took over from Mr. Ruto who recorded a witness statement in this matter. He produced the documents in the 2<sup>nd</sup> defendants List of Documents as 2<sup>nd</sup> Defendant's exhibits 1-7. He testified that the suit property was allocated to the plaintiff and he paid Kshs.625 on 11<sup>th</sup> April, 1984 being 10% deposit of the purchase price.
17. He stated that according to the status report in their file dated 18<sup>th</sup> February, 2002, the suit property was not developed and this is what led to the property being reallocated to the 1<sup>st</sup> defendant. He explained that the procedure to be followed if an allottee fails to comply with the terms of the allotment is that he should receive a letter asking him to remedy the breach within a specific period failing which the offer is cancelled. In this case no such letter was written to the plaintiff nor was the offer formally terminated. He told the court that such omissions would render the new allotment irregular. He later visited the suit property and prepared a report dated 15<sup>th</sup> January, 2018 (2<sup>nd</sup> Defendant's exhibit 8) which confirmed that the plaintiff was still in occupation of the suit property. He recommended that the 1<sup>st</sup> Defendant be issued with another plot in the same scheme but they had been unable to identify a suitable plot that could be allocated to her. He produced the parcel file as 2<sup>nd</sup> Defendant's exhibit 9.



18. After the close of the defendants' case the parties were directed to file their submissions and they duly complied.
19. Having considered the pleadings, evidence on record and the parties' submissions, the following issues arise for determination:
  - i. Whether the allocation of the suit property to the 1<sup>st</sup> Defendant was proper.
  - ii. Whether the 1<sup>st</sup> defendant acquired a valid title to the suit property
  - iii. Whether the plaintiff is entitled to the reliefs sought.

### **Analysis and Determination**

20. It is not in contention that both the plaintiff and the 1<sup>st</sup> defendant were issued with allotment letters in respect of the suit property. The plaintiff produced a Letter of Offer dated 19<sup>th</sup> May, 1978 (PEX 1) together with a receipt dated 11<sup>th</sup> April, 1984 for payment of Kshs.625 being 10% of the purchase price. On the other hand, the 1<sup>st</sup> defendant produced a Letter of Offer dated 9<sup>th</sup> October, 2003. The letters were issued by the Settlement Fund Trustee and the Director Land Adjudication and Settlement respectively.
21. The Plaintiff's Letter of Offer contains the following conditions:
  - a. "That in future you will pay to Settlement Fund Trustees such sum of money as you may be called upon to pay.
  - b. That you shall at all times remain on the plot permanently.
  - c. That you shall use the plot for agricultural purposes.
  - d. That you shall not cause the land to be sub-divided, charged, let, leased or charged.
  - e. That you shall with immediate effect
    - i. Cultivate at least an acre of arable land
    - ii. Erect a dwelling house of suitable material and
    - iii. Erect a fence of suitable material or plant a hedge around the perimeter of the land and continue to maintain the same in a satisfactory condition.
  - f. That you shall comply with such rules for agricultural development of the land as may be laid down by the Minister for Agriculture or any other person authorized by him
  - g. That you shall pay such rates, taxes, charges duties, assessments or outgoings of whatever description as may be imposed by the government upon the land or the buildings thereon
  - h. In case of breach of any of the above conditions, the offer contained herein shall be withdrawn".
22. It was the plaintiff's case that he paid the 10% deposit which he was required to pay. He also paid the rates and other outgoings as per the receipts which he produced as PEX 3(a), (b) and (c). He erected a live fence and planted, trees and Napier grass. He also constructed a house and he had been living on the suit property from 1978.
23. In his testimony DW2 stated that what led to the issuance of the Letter of offer to the 1<sup>st</sup> Defendant was the ground report dated 18<sup>th</sup> February, 2002 (1<sup>st</sup> DEX 10) which indicated that the suit property was an open filed with no structures on it. He stated that when he visited the suit property in January



2018, he established that the plaintiff was still in occupation thereof and according to his report dated 15<sup>th</sup> January, 2018 (2<sup>nd</sup> DEX 8), he had talked to village elder who confirmed to him that the plaintiff had been living on the suit property for many years and he had buried his wife thereon in 1982. He had also buried his four-year old son on the suit property and their graves were visible. The report also confirmed that the plaintiff had cultivated about two acres of the suit property.

24. It was the evidence of DW2 that according to their procedures, if a person does not comply with the terms and conditions in the letter of allotment, the allottee receives a notice requiring him to remedy the breach within a specific period and it is only if he fails to do so that the allotment is revoked. He confirmed that they had neither written to the Plaintiff to remedy the breach nor had they notified him of the cancellation. He stated that these are omissions which would render the 1<sup>st</sup> Defendant's title invalid. He stated that the mistake was on the part of the Land and Adjudication Office and the 1<sup>st</sup> Defendant was not to blame. He recommended that the allocation to the plaintiff be upheld and the subsequent allocation to the 1<sup>st</sup> defendant be cancelled.
25. He stated that he had recommended that the 1<sup>st</sup> defendant be allocated an alternative plot but they had not been able to identify a suitable plot for her.
26. What emerges from the evidence of DW2 is that the 2<sup>nd</sup> Defendant admits that allotment of the suit property to the 1<sup>st</sup> Defendant was irregular as they did not follow the right procedure in terminating the allotment letter that had earlier been issued to the plaintiff thus resulting in double allocation and it is therefore my finding that the allocation to the 1<sup>st</sup> defendant was irregular and unprocedural.
27. I will now move on to the second issue which is whether the 1<sup>st</sup> defendant acquired a valid title to the suit property.
28. It is trite law that a letter of allotment does not confer ownership of land to the allottee. The courts have on several occasions pronounced themselves on this issue. This position was restated by the Supreme Court in the case of *Torino Enterprises Limited v Attorney General* (Petition 5 (E006 of 2022) (2023) KESC 79 KLR where the court observed as follows:

“.....It is settled law that an Allotment Letter is incapable of conferring interests in land, being nothing more than an offer awaiting the fulfilment of conditions stipulated therein. *Dr. Joseph N.K Arap Ng'ok v Moijo Ole Keiyua & 4 others C.C 60/1997 (Unreported)* and *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 Others H.C Civil 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”
29. As correctly submitted by counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, allotment letters may be time-bound or open offers and where the offer is time-bound the offer would automatically lapse by effluxion of time if the allottee fails to comply with the conditions of the offer within the time stipulated in the offer letter.
30. On the other hand, open offers provide for a mechanism of termination, and in case of breach, the offer must be formally terminated.



31. This was so stated in the case of *Bubaki Investment Company Ltd v National Land Commission & 2 Others* (2015) eKLR where the court observed as follows:

“If the offer is open and is not specific within what a period it is to be accepted, I would agree with the authors that the revocation of the offer would have to be communicated to the offeree. However, where an offer has a specified time within which it has to be accepted, no communication of revocation would be necessary as it is simply would stand revoked on expiry of the specified period. A time extension and/or a fresh offer would be necessary to reactivate the offer.”

32. Since the offer to the Plaintiff in the instant case was an open one, it could only be revoked through a notice to the plaintiff. However, since DW2 admitted that no such communication was sent to the Plaintiff, the allotment issued to him was still subsisting at the time the second allotment to the 1<sup>st</sup> defendant was made resulting in double allocation.

33. Although counsel for the 1<sup>st</sup> defendant has submitted that the plaintiff failed to pay the full requisite charges or develop the suit property, this is not borne out by the evidence on record. I have perused the parcel file for the suit property and there is no correspondence to the plaintiff informing him how much he was supposed to pay nor is there any communication informing him that if he fails to pay the required amount within a specific period, his offer would be cancelled. As far as development of the suit property is concerned, DW2 pointed out that the status report dated 18<sup>th</sup> February, 2002 which indicated that the suit property was an open field was inaccurate as he personally visited the suit property and found various developments thereon. The plaintiff is therefore not to be blamed nor have any of the allegations of fraud alleged against him by the plaintiff been proved. DW2 was categorical that the mistake lay with the 2<sup>nd</sup> Defendant and their omission rendered the title issued to the 1<sup>st</sup> Plaintiff invalid.

34. What this means is that even though the 1<sup>st</sup> defendant has a title deed in her name, the same was acquired through a flawed process and it is therefore invalid. This is in line with section 26 of the [Land Registration Act](#) provides as follows:

S. 26 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 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 grounds of fraud, or misrepresentation to which 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.

35. From the foregoing it is my finding that the plaintiff has proved his case on a balance of probabilities. Consequently, I enter judgment of the Plaintiff and make the following final orders:

- a. A permanent injunction is hereby issued restraining the defendants from entering, dealing with, leasing, removing the plaintiff, farming, damaging, alienating or in any other way dealing with the all that property known as Uasin Gishu Kahungura/423.



- b. An order is hereby issued cancelling the title in the name of the 1<sup>st</sup> defendant and the Land Registrar Uasin Gishu County is directed to issue a title deed in the name of the Plaintiff upon payment of the balance of the purchase price within 90 days. Thereafter the register of the said title shall be rectified accordingly.
- c. The 2<sup>nd</sup> defendant shall bear the costs of this suit.

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

**J.M ONYANGO**

**JUDGE**

**In the presence of;**

1. Dr. Chebii for the Plaintiff
2. No appearance for the Defendant

Court Assistant: A. Oniala

