



Missos v County Government of Uasin Gishu & 4 others (Environment & Land Case 374A of 2012) [2023] KEELC 22426 (KLR) (13 December 2023) (Judgment)

Neutral citation: [2023] KEELC 22426 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 374A OF 2012
JM ONYANGO, J
DECEMBER 13, 2023**

BETWEEN

FRANCIS SIRATEI MISSOS PLAINTIFF

AND

THE COUNTY GOVERNMENT OF UASIN GISHU 1ST DEFENDANT

THE LAND REGISTRAR, UASIN GISHU 2ND DEFENDANT

THE HON ATTORNEY GENERAL 3RD DEFENDANT

KENYA MEDICAL TRAINING COLLEGE 4TH DEFENDANT

**NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT FUND
BOARD- AINABKOI CONSTITUENCY 5TH DEFENDANT**

JUDGMENT

1. The Plaintiff instituted this suit vide a Plaint dated 10th August, 2007 which was amended several times with the last amendment being the one dated 19th October, 2022. In his Plaint, the plaintiff claims that sometime in 1975 he bought a parcel of land known as Burnt Forest Township Plot No. 100 measuring 3.08 acres from the Settlement Fund Trustee (herein after referred to as SFT) and he was later issued with a certificate of outright purchase but the 2nd and 3rd Defendants have failed to issue him with a title deed. The Plaintiff therefore seeks the following reliefs from the defendants:
 - a. A declaration that the land parcel known as Burnt Forest Township Plot No. 100 belongs to the Plaintiff and for registration and issuance of a Certificate of title.
 - b. A permanent injunction restraining the Defendants, their agents and/or servants or any other person claiming an interest in the suit land through the Defendants from interfering and/or evicting the Plaintiff from land parcel number Burnt Forest Township Plot No. 100.



- c. General damages
 - d. Costs and interest.
 - e. In the alternative and without prejudice to prayers (a) and (b) above, an order for compensation by the Defendants at the current market value with interest at commercial rates.
2. The 1st Defendant filed its Further Amended Statement of Defence and Counterclaim to the Further, Further, Further Amended Plaintiff on 11th May, 2021 in which it denies the Plaintiff's claim. In its Counterclaim, it avers that the suit property is public land earmarked for public utilities, and consequently the allotment of the same to the plaintiff was unlawful, fraudulent and irregular. It prays for a declaration that the purported purchase, allotment and subsequent issuance of the certificate of outright purchase over land parcel number Burnt Forest township Plot No. 100 in favour of the plaintiff is null and void. It further prays that the certificate of outright purchase issued to the plaintiff be cancelled and an eviction order be issued against him. It prays for a declaration that the suit property is public land earmarked for public utilities and that the plaintiff is at liberty to pursue his claim against Burnt Forest Settlement Scheme and not Burnt Forest Township as these are two distinct entities.
 3. In their Statements of Defence and Counterclaim the 2nd, 3rd and 5th Defendants similarly deny the plaintiff's allegations against them and aver that the suit property is public land. Consequently, they pray for a declaration that the allotment and subsequent issuance of the Certificate of outright purchase over the suit property in favour of the Plaintiff is null and void. They also pray that the said certificate of outright purchase be cancelled and that the plaintiff be evicted from the suit property. The 4th Defendant filed a Defence dated 19th October, 2019 denying the allegations in the Plaintiff.
 4. The case proceeded for hearing and the parties testified and called their witnesses. However the 4th Defendant did not participate in the hearing.

Plaintiff's Case

5. The plaintiff relied on his witness statement dated 29th October, 2018. He testified that he applied for allotment of land to the Settlement Fund Trustees vide his letter dated 23rd June, 1970. By his letter dated 28th January, 1975 the Director of Settlement acknowledged the plaintiff's application and advised him to pay Kshs.2,700. The Plaintiff subsequently paid the sum of Kshs.2,700 for which he was issued with an official receipt which he produced as Plaintiff's Exhibit 11. He was later issued with a letter of allotment although he was not able to produce the original allotment letter and the same was marked as PMFI 4. He was subsequently issued with a certificate of Outright Purchase dated 14th March, 2002 which he produced as Plaintiff's Exhibit 3.
6. The Director Land Adjudication and Settlement then wrote a letter dated 23rd April, 2002 to the Commissioner of Lands confirming that the plot was part of Burnt Forest Settlement Scheme and was thus the property of the Settlement Fund Trustee. He also confirmed that they had sold the said plot to the plaintiff on 3.2.1975. He explained that plot is adjacent to Burnt Forest Township and as a result, during planning it was erroneously planned as part of Burnt Forest Township and registered as government land instead of S.F.T land. He therefore advised the Commissioner of Lands to prepare a lease in the Plaintiff's name.
7. It was the Plaintiff's testimony that after he was allotted the plot, he took possession thereof but he was unable to occupy it as the County Council of Uasin Gishu kept bothering him and demolished some of his structures. He sought the intervention of the Provincial Administration and he produced a letter from the District Officer Ainabkoi referring the matter to the District Commissioner Uasin Gishu and



- one from District Commissioner informing the Commissioner of Lands that the suit property belongs to the plaintiff.
8. Following the complaints lodged by the plaintiff with the District Commissioner and the Ministry of Lands and the Commissioner of Lands, the District Physical Planning Officer visited the suit property and wrote a letter dated 25.7.2011 addressed to the Commissioner of Lands indicating that the plot had the offices of the Town Council of Burnt Forest as per PDP No.ELD 975/97/1 and Divisional Headquarters as per PDP No. ELD. 975/2007/1, as well as a Water Supply area with a PDP that had no number. In the said letter the District Physical Planning Officer noted that the PDPs referred to in the letter had not been approved.
 9. Among the exhibits produced by the plaintiff is a valuation report of the suit property dated February 2018 indicating that the suit property was valued at Kshs.20,000,000/=. He also produced photographs of the old structures that he found on the suit property.
 10. Upon cross-examination, the plaintiff confirmed that there are government offices on his plot including the Chief's office, Livestock Department Office, newly constructed Ainabkoi Kenya Medical Training College, Burnt Forest County Council Offices, the Administration Police Camp and a County Government Office under construction. When he bought it in 1975, it had 2 wheat stores and an old building which were referred to as Permanent Improvements (P.Is).
 11. He told the court that he was aware that the other members of Burnt Forest Settlement Scheme had been issued with title deeds. He said he had paid Kshs.2,700 and an additional sum of Kshs.3,250 for conveyancing but he had not been issued with a title deed.
 12. He confirmed that according to a copy of the Certificate of Official Search, the suit property was registered in the name of the Republic of Kenya on 1st October, 1977 although he was issued with a Certificate of Outright Purchase on 14th March, 2002. He stated that according to the Certificate of Official Search, the suit property measures 2.865 Ha but his plot measures 3.08 Ha. He said the government offices on his plot were constructed after he had bought it as it initially only had 2 wheat stores and a building on it.
 13. He confirmed that by the time he was issued with a Certificate of outright purchase, the suit property had already been registered in the name of the Republic of Kenya. Burnt Forest County Council was issued with an allotment letter in respect of the suit property on 5th August, 1998. He denied that his plot was at the Centre of Burnt Forest town. According to the letter dated 23rd April, 2002 his land was erroneously planned as part of Burnt Forest Town and registered as government land because it is adjacent to Burnt Forest town. He said he had allowed his land to be used as a Nursery school and church. He told the court that the government has its own land next the suit property but they have constructed a Medical Training college on his land.
 14. Nelly Jerotich, a Physical Planner in the Physical Planning Department, Uasin Gishu County testified on behalf of the 1st Defendant as DW1. It was her testimony that Land parcel no. 100 Burnt Forest was under the Settlement Fund Trustees but it was surrendered to the County Council of Wareng in 1970 for purposes of planning, survey and allocation. Once it was so surrendered the County Council was at liberty to plan and allocate it after setting aside land for public utilities. According to the Registry Index Map for Burnt Forest, the suit property is indicated as plot No. 126. After surrender of the suit property to the County Council a Plan was drawn on 6.1.70 and approved on 12th October, 1970 vide approval No. 50/70/3. After planning the suit property was reserved as a primary school.
 15. Another plan was prepared in 1987 which changed the user of the suit property from a Primary school to a Divisional Headquarters. It was then assigned No. 44. (Defence Exhibit 3).



16. She stated that the Certificate of outright purchase produced by the plaintiff was for land belonging to the S.F.T not public land. According her, the suit property belongs to the Government of Kenya.
17. On being cross-examined by Mr Tororei, DW1 confirmed that Burnt Forest Township was created out of Burnt Forest Settlement Scheme land parcel No. 126 as per sheet No. 2 of the RIM. According to her, parcel No. 100 Burnt Forest was created after the planning exercise by Wareng County Council and it was not created by the SFT. The suit property which measures approximately 3.0 acres was set aside for a public primary school and it could not have been allocated to an individual. She told the court that the S.F.T had no right to allocate the suit property after surrendering it to the government.
18. Upon being cross-examined by Mr. Sambu, she explained that by the time the plaintiff applied for land on 23rd June, 1970, the planning for Burnt Forest had not yet been concluded and it was concluded on 12th October, 1970. The land that was planned for a primary school had permanent improvements on it. The land that was surrendered by S.F.T was known as parcel no. 126. After surrender it was subjected to planning and plot no. 100 was one of the plots created out of parcel no. 126. According to her, it was not created erroneously.
19. She confirmed that the plaintiff's allotment letter was issued after the Development Plan for Burnt Forest had been approved. She clarified that whereas the certificate of Outright Purchase refers to plot No. 100 Burnt Forest Settlement Scheme, the Letter of Allotment refers to Plot No. 100 Burnt Forest Township and that these are two different plots.
20. Mr. Abel Ateka, the Assistant Director Land Adjudication and Settlement Department, Uasin Gishu testified as DW2. He stated that Burnt Forest Settlement Scheme was set up in the 70s for agricultural purposes and to settle the landless. He explained that each settlement scheme has a commercial area and the one for Burnt Forest Settlement Scheme was surrendered to the Commissioner of Lands or County Council.
21. Upon being shown Plaintiff's Exhibit 10- the letter dated 3rd April, 2002 which refers to plot No. 100 (old No. 831) which was sold to the plaintiff, he stated that the said plot was agricultural land within the scheme which belonged to the Settlement Fund Trustee. He told the court that the land in the Development Plan for Burnt Forest was excised from land belonging to the Settlement Scheme for purposes of commercial use.
22. Since the 4th Defendant did not participate in the hearing, its case was marked as closed. The parties subsequently filed their submissions

Parties' Submissions

23. In his submissions learned counsel for the Plaintiff was the rightful owner of the suit property as he had been allocated the suit property and complied with all the conditions in the letter of allotment. However, the former Burnt Forest Town Council had fraudulently acquired the suit property, had it sub-divided and illegally registered it in its name. He relied on the case of *Republic v city Council of Nairobi & 3 Others* (2014) eKLR cited in *Joseph Kagunya v Boniface K. muli & 3 Others* (2018) eKLR where the court held that;

“Once an 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 ownership, unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation or that the allotment was outrightly illegal or it was against



public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled”

24. It was his submission that having demonstrated that the suit property belongs to him, the plaintiff was entitled to the reliefs sought.
25. Counsel for the 1st Defendant submitted that the suit property is not only public property but it was set aside as a public utility entrusted to the 1st Defendant to deal with it in accordance with the Constitution. It was his contention that in the circumstances the suit property could not be alienated for private use without degazettement and change of user. He referred to the case of *Timothy Ingosi & 87 others Vs. Kenya Forest Services & 2 others* (2015) eKLR.
26. He further referred to the cases of *Kenya Anti Corruption Commission Vs. Fraun Investment Ltd & 6 Others* (2020) eKLR for the proposition that where government land has been specifically assigned for a public purpose, then so long as the purpose remains that land ought to be considered to be part of Government land that cannot be alienated to private individuals for private use regardless of whether an allotment letter or lease has been issued.
27. He also relied on the case of *Nelson Kazungu & 9 Others Vs. Pwani University* (2014) eKLR for the proposition that public interest in land will always outweigh an individual’s right to own property.
28. Counsel submitted that the Plaintiff had admitted that the land that was allotted him was in Burnt Forest Settlement Scheme and not Burnt Forest Township. In support of his case he produced a certificate of outright purchase in respect of Plot No. 100 Burnt Forest Settlement Scheme. He contended that the Plaintiff had not produced any title document as proof of ownership of the suit property.
29. It was counsel’s submission that due process had not been followed in allocating the suit property to the Plaintiff and he therefore could not have acquired a good title.
30. In his submissions learned counsel for the 2nd and 3rd Defendants contended that by 1974 when the suit property was allocated to the Plaintiff it had already been set aside for public use pursuant to the approved Development Plan of 1970 and it was therefore not available for allocation. He relied on the case of *Timothy Ingosi & 87 Others v Kenya Forest Service & 2 Others* (2015) eKLR where the court held that the suit property was government land reserved for public purposes and as such it could not be reallocated.
31. Counsel further submitted that the suit property was unlawfully and unprocedurally acquired as it had been reserved for public use. He relied on the case of *Norbixin Kenya Limited v The Attorney General* (2014) eKLR where the court declined to make orders in favour of the plaintiff even though he had a title deed because the plaintiff’s allotment was irregular as the land was not available for allotment.
32. In his submissions learned counsel for the 5th Defendant submitted that the plaintiff did not meet the conditions in the letter of allotment and he was never issued with a certificate of title and he was therefore not lawfully allotted the suit property. He relied on the case of *Joseph Arap Ngok v Justice Moijo Ole Keiwua* Nai Civ Application No. 60 of 1997 where the Court of Appeal observed as follows:

“It is trite that title to landed property comes into existence after issuance of a letter of allotment, meeting the conditions in such letter and actual issuance thereafter of a title document pursuant to the provisions of the Act under which the property is held”
33. Counsel further submitted that the Settlement Fund Trustee had no powers to allocate land to the Plaintiff after it surrendered the land to Wareng County Council and therefore the letter of allotment



dated 5th August, 1998 was issued way after the Settlement Fund Trustee had surrendered the land to Wareng County Council. By then the suit property was public land set aside for the development of public utilities and it was not available for allocation to a private individual.

34. He relied on the case of *Kenya Anti Corruption Commission v Fran Investments Limited & 6 others* for the proposition that where land has been set aside for a public purpose, it cannot be alienated to private individuals for private use.

Analysis And Determination

35. Having carefully considered the pleadings, oral and documentary evidence on record as well as the parties' submissions, the following issues arise for determination:
- i. Whether the parcel of land known as Plot No. 100 Burnt Forest Township was lawfully allocated to the plaintiff.
 - ii. Whether the Plaintiff is the rightful owner of Plot No. 100 Burt Forest Township.
 - iii. Whether the Plaintiff is entitled to the reliefs sought.
 - iv. Who should pay the costs of the suit.
36. It is not in dispute that the plaintiff bought a parcel of land from the Settlement Fund Trustee for which he was issued with a receipt dated 3rd February, 1975 for Kshs.2,700/=. He was subsequently issued with Certificate of Outright purchase dated 14th March, 2002 and an allotment letter dated 6th May, 2002. However, the plaintiff was not issued with any title deed despite making a follow up with the Director of Adjudication and Settlement. He also lodged a complaint with the District officer Ainabkoi and District Commissioner Uasin Gishu and he produced a series of correspondence between these offices and the Commissioner of Lands, Ministry of Lands and Director of Land Adjudication.
37. What is in contention is whether the suit property was lawfully allocated to the plaintiff. According to the evidence of DW1, a Physical Planner in the Department of Physical Planning, Uasin Gishu County, the suit property was initially under the Settlement Fund Trustee but it was surrendered to the County Council of Wareng in 1970 for purposes of, survey and allocation. The County council then embarked on planning and the suit property was assigned as a primary school vide a Development Plan drawn on 6th January, 1970 and approved on 12th October, 1970. A subsequent plan drawn on 27th November, 1987 changed the user of the suit property to Divisional Administrative Headquarters. She was emphatic that the suit property has never been private property as it belongs to the Government of Kenya. In his evidence the plaintiff confirmed that when he bought the suit property in 1975 it had some government offices and two wheat stores.
38. What is apparent is that the Settlement Fund Trustee failed or neglected to document the surrender of the suit property to Wareng County Council and continued to deal with it as if it still belonged to the Settlement Fund Trustee, hence the allocation of the same to the Plaintiff. This was confirmed by DW2, the Assistant Director, Land Adjudication and Settlement, Uasin Gishu County who testified as DW2. He stated that as at 12th October, 1970, when the Part Development Plan was approved they did not have jurisdiction over the land they had surrendered to the County Council of Wareng. In any case the Certificate of Outright Purchase produced by the plaintiff is in respect of Plot No. 100 Burnt Forest Settlement Scheme and not Burnt Forest Township and the two are different parcels of land.



39. It therefore follows that since the suit property belonged to the County Council of Wareng and it had been reserved for public use as a primary school, it could not be allocated to the Plaintiff. As was held in *Kenya Anti-Corruption Commission v Frann Investments Limited & 6 others* (2020) eKLR
- “.. where Government land has been assigned for a specific public purpose then so long as that public purpose remains, that land ought to be considered to be part of Government land that cannot be alienated”
40. The same position was adopted in *Kenya Anti-Corruption Commission v Paulina Kemuma Anunda and Another* (2022) eKLR.
41. Further in *Nelson Kazungu chai & Others v Pwani University* (2014) eKLR the court observed as follows:
- “Where land has been reserved for public purpose, like in this case, any allocation of such land to private persons cannot be recognised by the court. Public interest in land will always outweigh an individual’s right to own the same property. It therefore does not matter that the Plaintiffs had a legitimate expectation to be allocated the suit property”.
42. In the instant suit the suit property has critical government installations including the County Government offices, Burn Forest Town Council Offices, Chief’s Office, Livestock Department, Sub-County Administrator’s office and Burnt Forest Medical Training College. It is therefore evident that the suit property is government land which could not have been alienated for private use. The said allocation was therefore unlawful and void ab initio.
43. Having arrived at the finding that the allocation of the suit property to the plaintiff was unlawful it follows that the Plaintiff is not the rightful owner of the suit property.
44. In his Complaint the Plaintiff sought several reliefs including a declaration that the land parcel known as Burnt Forest Plot no. 100 belongs to him and that he be registered as the owner thereof. He also sought a permanent injunction restraining the defendant from interfering with the suit property and general damages. Further and in the alternative he sought an order of compensation by the defendants at the current market value of the suit property together with interest at commercial rates.
45. Having come to the conclusion that the Plaintiff is not the rightful owner of the suit property, he cannot be declared as the owner thereof nor can the suit property be registered in his name. The prayer for injunction against the defendants is similarly not available to him.
46. Regarding the prayer for compensation, it is clear that the plaintiff paid the sum of Kshs.2,700 for the parcel of land which was to be issued by the settlement Fund Trustee as evidenced by the Certificate of Outright purchase. He was subsequently issued with a letter of allotment dated 6th May, 2002 by the Commissioner of Lands in respect of plot No. 100 burnt Forest for which he promptly paid a sum of Kshs.3,530 vide a receipt dated 13th May, 2002. He therefore had a legitimate expectation that he would be registered as the owner of a parcel of land measuring 3.0 acres. In view of the fact that the initial allocation was by the Settlement Fund Trustee, they would be the ones responsible for compensating the plaintiff. However, I note that in the course of amending the Complaint, which has been amended more than three times, it appears the Settlement Fund Trustee was removed as a party. Consequently, I am unable to issue any orders for compensation against them as they are no longer a party to this suit.



47. In the end, the plaintiff's suit fails and is dismissed. On the other hand, the Counterclaim of the 2nd, 3rd and 5th Defendants succeeds and I enter judgment in favour of the 2nd, 3rd and 5th Defendants on their counter claims as follows:

- a. A declaration is hereby issued that the land parcel known as Burnt Forest Township Plot No. 100 is public land.
- b. A declaration is hereby issued that that the purported purchase, allotment and subsequent issuance of a certificate of outright purchase over the land parcel known as Burnt Forest Township Plot No. 100 in favour of the Plaintiff is null and void.
- c. An order of revision is hereby issued cancelling the certificate of outright purchases of parcel number Burnt Forest Township Plot No. 100 in the name of Francis Siratei Missos.
- d. An eviction order is hereby issued evicting the Plaintiff, his agents and servants from the suit property within 60 days from the date of this judgment.
- e. For the avoidance of doubt the orders of injunction earlier issued herein are hereby vacated.
- f. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 13TH DAY OF DECEMBER 2023.

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J.M ONYANGO
JUDGE

