



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 108 OF 2010

COFFEE BOARD OF KENYA.....PLAINTIFF

VERSUS

SOTUA DEVELOPMENT COMPANY LIMITED.....1ST DEFENDANT

COMMISSIONER OF LANDS.....2ND DEFENDANT

JUDGMENT

1. Vide a plaint dated 11.3.2010 and amended on 8.3.2011 to bring on board the Commissioner of Lands, the Plaintiff claimed that it owned the Land Reference No. 209/10537 as from 1.10.1986. The Plaintiff pleaded that a title was illegally issued to the 1st Defendant and hence sought the following orders.

a) An order of permanent injunction do issue to restrain the 1st Defendant by itself, its servants, workmen, agents or otherwise howsoever from dealing with the suit land by purporting to sell, charge, mortgage or entering, accessing, remaining onto, getting ingress into or trespassing into the Plaintiff's Land Reference Number 209/10537 and/or from destroying or otherwise injuring the hedge or fence on the boundaries thereof, or from erecting or causing to be erected any structure thereon whether temporary or permanent in nature or from in any way interfering with the Plaintiff's peaceful possession and enjoyment of the said property.

b) A declaration that any Title held by the 1st Defendant purporting to be in respect of the suit land is illegal and ought to be recalled by the 2nd Defendant for cancellation.

c) An order that the 1st Defendant do surrender to the 2nd Defendant any Title held by the 1st Defendant purporting to be in respect of the suit land for immediate cancellation.

d) General damages for trespass.

e) The sum of Kshs 385,010.00 as particularised hereinabove.

f) Interest on (d) and (e) above at court rates from the date of filing suit until payment in full.

g) Costs of the suit.

h) Any other relief the court deems fit to grant.

2. The 1st Defendant did not enter appearance. The 2nd Defendant filed a memorandum of appearance on **20.4.2011** but I have not come across any statement of defence.

3. On **31.7.2019**, the Plaintiff sought leave to amend the Plaint to remove the Commissioner of Lands and bring on board the Chief Land Registrar of which such leave was granted. However, the said amended plaint was not formally lodged in court (though an uncertified copy is in the file.)

4. On **25.7.2019** Mr. Arusei appeared for an intended 3rd party (Kensalt) claiming that the said entity had purchased the suit property from 1st Defendant in the year 2010. The court directed them to file a formal application to be joined in these proceedings. The said application was filed. However, on **19.5.2021**, the intended 3rd party withdrew its application.

5. In view of the foregoing analysis this matter is considered as an undefended claim even though the Attorney General had tendered its

defence. The reason being that, the Commissioner of Lands did not file any defence and the said entity no longer exists.

6. The Plaintiffs claim was advanced by one Esther Chelanga who is a Senior Administration Officer of the Plaintiff. She adopted her statement dated 18.7.2019 as her evidence. she also produced the documents in her list dated 2.11.2021 exhibits 1 -8.

7. PW1 avers that Plaintiff is the grantee of the suit land as the same was delineated in the land Survey Plan No. 243775 on 1.10.1986 for a term of 99 years. She contends that 1st Defendant fraudulently acquired parallel documents in respect of the suit land hence the illegal title ought to be cancelled. She

clarified that they were not claiming any amount from the 2nd Defendant.

8. No submissions were filed as directed by the court.

Determination

9. I have considered the Pleadings as well as the evidence tendered herein. The issue for determination is; who is the lawful owner of the suit land.

10. I find that Plaintiff Exhibit No. 5 is a letter of allotment dated 9.10.1986 issued to the Plaintiff in respect of the suit land. There is no evidence to indicate that the said allotment was ever cancelled.

11. In the case of **Waas Enterprises Limited v City Council of Nairobi & Another (2014) eKLR**. The court cited the Case of **Rukaya Ali Muhamed v David Gikaiyo Nambacha & Another Kisumu HCCA 9 of 2004** where Warsame J (as he then was stated as follows):

“once an allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment....”where the land has been allocated, the same cannot be re-allocated unless the first allocation is validly and lawfully cancelled.

12. There being no evidence that the allotment to Plaintiff was ever cancelled, then I find that any acquisition of the land to another entity is null and void.

13. The Plaintiff has termed 1st Defendant as a trespasser and claims damages thereof.

14. I have perused the amended plaint whereby the claim on trespass is not well articulated in that pleading. There is no clear statement on the nature and extent of the alleged trespass and when the same took place. Further, nowhere in her statement has PW1 mentioned the alleged trespass. I therefore find that the claim of trespass has not met the evidential burden of proof as set out under **Section 107** of the **Evidence Act** even though the claim is undefended.

Relief

15. The Plaintiffs' claim is partially allowed in the following terms:

1) It is hereby declared that Plaintiff is the rightful owner of the Land Reference No. 209/10537.

2) An order of permanent injunction is hereby issued restraining the 1st Defendant, its servants, or agents from dealing with the suit land Reference Number 209/10537 in any manner.

3) Any Title held by the 1st Defendant purporting to be in respect of the suit land is hereby declared as illegal and the same is to be cancelled in the register.

4) Each Party to meet their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Chege for the Plaintiff

Court Assistant: Eddel Barasa