REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL CASE 186 OF 2010

CHARLES LUTTA KASAMANI.....PLAINTIFF

VERSUS

1. ATTORNEY GENERAL)

2. COMMISSIONER OF LANDS).....DEFENDANTS

JUDGMENT

The Plaintiff, **CHARLES LUTTA KASAMANI** filed this suit against the Defendants, the Attorney General (1st Defendant) and The Commissioner of Lands (2nd Defendant) seeking the following orders:

(a) Vacant possession of **LR.8056/314 Mumias Township** in the Republic of Kenya.

(b) In the alternative, land equivalent to **L.R.8056/314 Mumias Township** in the Republic of Kenya.

(c) **Mesne** profits from July 2002 till the hearing and determination of this case, at a rate to be determined by the court.

The Plaintiff's case is that in the month of August 1995, the Plaintiff purchased the suit plot from one Esther N. Maina who had been allotted the same. A sale agreement was entered into and the seller handed the letter of allotment to the Plaintiff. The Plaintiff paid the allotment charges of Ksh.12,705/=.

The sale transaction was consented to by The Commissioner of Lands and further fees of Kshs.4,080/= paid for the transfer. An additional fee of Kshs.4,035/= was paid after the Plaintiff received a letter from the Commissioner of Lands notifying him that the plot was found to have more acreage than stated earlier. The documents were processed and the plaintiff issued with a title Deed for the plot.

The District Surveyor and the Town Planner however discovered that part of the plot fell on the District Officers official residence compound and the other part on a road reserve. The Council eventually gave out the plot for the construction of the District Commissioner's office.

Efforts made by the plaintiff to have the Mumias County Council harmonize the land on the ground and the Title Deed were not fruitful. The plaintiff wrote to the Commissioner of Lands to resolve the matter. On 13.5.09 the Commissioner wrote promising to allocate the plaintiff an alternative plot. However, no alternative plot was allocated to the plaintiff.

The plaintiff sought legal redress and sent a statutory notice to the Attorney General dated 12.7.2010 and upon expiry of the same filed this suit.

The Attorney General on behalf of the 1st and 2nd Defendants filed a Statement of Defence dated 16th January, 2011. In the said statement of defence, the Defendants denied that the parcel of land in question was allocated to one Esther N. Maina. The sale and transfer by the said Esther N. Maina to the plaintiff is also denied.

The defendants denied the issuance of title to the said plot to the Plaintiff. It is also denied by the Defendants that the land was re-allocated for the construction of the District Commissioner's office. The Defendants also denied that the plaintiff requested that the 2nd Defendant to allocate him an alternative parcel of land within Mumias Municipality and also denied having neglected or refused to allocate the plaintiff an alternative parcel of land.

The Defendants asserted that the parcel of land had been set aside for government use and termed the allocation as irregular.

The case proceeded to hearing on 14.2.12. There was no attendance for the 1st and 2nd Defendants although they had been duly served. The case proceeded ***exparte***.

I have considered the plaintiffs evidence and I have no reason to doubt the same. The plaintiff's case is supported by the following documents:-

- Letter of allotment of the plot to Esther N. Maina (exh.1).

- Agreement for sale to the plaintiff dated 18.8.1995 (Exh.2).

- Receipt for payment of allotment fees dated 29.8.1995 (exh.3).

- Letter from the Commissioner of Lands dated 17.10.1995 settling terms for transfer to the plaintiff (Exh.4).

- Transfer form dated 25.8.1995 duly signed by the Vendor and the Purchaser (Exh.5).

- Receipt for transfer fees dated 29.3.96(Exh.6).

- Letter from Mumias Town Council dated 12.3.1996 (exh.7) informing the plaintiff that the main water line passed through the plot.

- Demand letter for allotment fees dated 4.9.2000 (Exh.8).

- Receipt No. E633619 for payment of additional legal fees dated 5.10.2000 (Exh.9).

- Copy of draft Grant under Registration of titles Act. (Exh.10)

- The title Deed in the plaintiff's name (Exh.11)

- Letter to Mumias County Council regarding boundaries dated 24.1.2003 (Exh.12).

- Letter from Mumias Municipal Council in reply dated 12.2.03 (Exh.13).

- The plaintiff's letter of complaint to the Commissioner dated 7.8.08 (Exh. 14).

- Letter from the Commissioner of Lands dated 13.5.2009 stating that the plaintiff would be allocated an alternative plot (Esh.15).

- Notice by the plaintiff to the Attorney General of intention to institute proceedings (Exh.16).

- Letter dated 19.8.2010 from the Commissioner of Lands requesting for details of the disputed land.

- Notice by the plaintiff dated 28.8.2010 of the intention to institute proceedings against the Attorney General. (Exh.18).

On the basis of the evidence adduced by the plaintiff, I am satisfied that he has proved his case on a balance of probability. The plaintiff in his letter dated 7.8.08 (Exh. 14) had indicated to the Commissioner of Lands that he did not wish to oppose the development of a public utility, i.e. the Construction of the District Commissioner's office. The plaintiff also abandoned his claim for **Mesne** profits.

Consequently, I enter judgment for the plaintiff against the Defendants jointly and severally in the alternative prayer for the allocation of Land equivalent to L.R. 80556/314 Mumias Township.

Orders accordingly.

Delivered, dated and signed at Kakamega this 24th day of May, 2012

B. THURANIRA JADEN
J U D G E