



REPUBLIC OF KENYA

High Court at Eldoret

Civil Case 69 of 2001

JUSTO NGOKA & 225 OTHERS.....PLAINTIFFS

VERSUS

RAI PLYWOOD (K) LTD

COMMISSIONER OF LANDS

HON. ATTORNEY GENERAL.....DEFENDANTS

JUDGEMENT

The Plaintiffs filed their plaint on the 5.4.2001 praying for the following orders:

1. A declaration that the Certificate of Lease No. ELDORET MUNICIPALITY BLCOK 11/59 or Letter of Allotment dated 26th November 1986 by the Second Defendant to the 1st Defendant is null and void.
2. A declaration that the Plaintiffs have a purchaser's interest in the land and the second and third Defendants be ordered to issue a certificate of lease Grant IR 10837 in the name of the Plaintiffs and or their agents or trustees.
3. General damages for eviction and loss of user.
4. Costs of this suit.

The Plaintiffs state that on or about 1979 land buyers known by the name Sangalo Group bought land IR No. 10857 (LR 8637/7) from John Joseph Hughes (now deceased) and paid purchase price to the proprietor and after the necessary legal procedures the land was given to Sangalo Group who subdivided the same to their members. The land after the death of John Joseph Hughes is now registered in the name of Eugene Dorothy Hughes as the executrix of his estate whose whereabouts is presently unknown.

The Plaintiffs state that on or about 1991 the First Defendant without any color of right used bulldozer to evict the Plaintiffs from the land with the assistance of the Administration Police without regard to their purchaser's interest. That the third Defendant failed to protect the Plaintiffs' rights.

That the Plaintiffs later discovered that on or about 1986, the 2nd Defendant has unlawfully purported to issue a letter of allotment o the 1st Defendant for L.R No. 8637/7 and referred it as Block 11/59 Eldoret and subsequently unlawfully issued a certificate of lease number ELDORET MUNICIPALITY BLCOK

11/59. The Plaintiffs contend that the issuance of the letter of allotment and the subsequent certificate of lease was *ultra vires* to the powers of the 2nd Defendant under the Government Lands Act and the same is null and void *abintio*.

The 1st Defendant filed a defence on 8th May 2001. The 1st Defendant state that the current suit is time barred under the provisions of the Limitations of Actions Act Cap. 22. The 1st Defendant also denies all the facts forming basis of the Plaintiffs case. It further states that if there was an agreement for sale between Sangalo Group and any person over LR No. 8637/7 (IR 10857) the same is void on the grounds that, Sangalo Group is not a legal entity capable of entering into a legal agreement; Sangalo Group could not have entered into an agreement with a deceased person; no written agreement of purchase exists.

The 1st Defendant in its statement of Defense further states that if at all LR No. 8637/7 (IR 10857) in the name of John Joseph Huges which they deny then the same reverted to the Government on the doctrine of escheat. That the 1st Defendant has not forcibly removed the Plaintiffs and that the Plaintiffs have no purchasers interest in the said property. It also denies that there is any relationship between LR No. 8637/7 (IR 10857) and Eldoret Municipality/ Block 11/59. That Rai Plywoods (k) ltd was a bonafide purchaser for value without notice of any alleged adverse claims over Municipality/ Block 11/59, is in occupation and have put improvements worth over 100 million. That the 1st Defendant the registered owner under the Provisions of the Registered Land Act (cap. 300). That their title being a first registration cannot be challenged under section 143 of the Act. That the declaration sought are by their nature unenforceable and the prayer 11 of the plaint is superfluous. The 1st Defendant sums up by stating that the Plaintiffs suit does not disclose a cause of action and should be dismissed with costs.

The 2nd and 3rd Defendants have filed their Defense thorough the Office of the Honourable Attronet General on the 29.1.2002. In their defense the 2nd and 3rd Defendants deny all the issues raised by the Plaintiffs and state if any title was issued then it was done in accordance with the laid down procedures and regulations.

The matter proceeded by way of viva voce evidence.

PW 1 was Justo Ngoka Namweda. He gave his testimony in Kiswahili. He stated that he is a juka kali artisan and lives in Kinango Eldoret. He is one of the Plaintiffs in this case. That he knows the subject matter of the suit LR. 8637 with the new number Municipality/ Block 11/59. That the original grant was issued to John Joseph Hughes. He stated that the last registered owner of the property was Dorothy Eugene Hughes. She was registered as owner on the 12/2/1980. That 6 people applied to buy the land in the 1960's and on 12/8/1969 the board approved the sale. He names two of the six people as Sura Singh and his brother one Mibei. That the land was 375 Acres. That four of the buyers operated under the name Sangalo Group. That Sangalo Group bought the 375 Acres but Singh was to take a portion of 55 Acres under quarry known as Uasin Gishu Quarry. That people started settling on the land in 1969 through the 1980's. That he settled on the land in 1981. That four directors of Sangalo oversaw the allocations of the land.

He further testified that the 1st Defendant moved in early 1970's and they bought 10 acres from the directors of Sangalo farm, they put up a factory. That the relationship between the 1st Defendant and the Plaintiffs was cordial and the 1st Defendant did not raise any objection to their developments. That on 19th April 1991 at 4 a.m their houses were demolished using a bulldozer registration No. KSE 448. This was done with the assistance of Administration police officers. That Bishop Stephen Abani of ACK Church went to complain to the Provincial Commissioner, but he was arrested and locked in for one day.

He states that after investigations they established that the 1st Defendant Rai Plysales was give allotment letter over Municipality/ Block 11/59 on 1/7/1985. The land was said to be 26.6 HA. They were later issued with certificate of lease dated 27/1/1987. The allotment letter and certificate of lease were marked as Exhibit P2 and P3 respectively. He states that he believes the land belongs to them. That the Commissioner of Lands in a letter dated 4/4/1896 explained that Rai Ply Woods had been given 18.86

HA of land but that 8.46 HA were not allocated to the 1st Defendant. That the Commissioner took issue with the allotment. That on 17/9/1990 the Ministry of Agriculture demanded shs. 9,065/40 from Sangalo farm. That the Plaintiffs sought the assistance of the District Commissioner on diverse dates of 12/11/1998; 22/10/1998 and 16/6/1999 when the 1st Defendant was invited to attend but they failed to attend the said meetings. That they have not been compensated to date. That through their advocates they wrote demand letter dated 4/9/2000 to the 1st Defendant Company and the Attorney General, the letter was marked as **Exhibit P8**. That the Attorney General replied through a letter dated 12/10/2000, the reply letter was marked as **Exhibit P9**. That they pray for an order to have their land back and compensation for eviction. That they also pray to have the certificate issued to the 1st Defendant Company be nullified, and the costs of the suit.

On cross examination PW1 testified that he was not among the six persons who bought the land. That he knew the 6 persons but could not remember all their names. He only remembers Mibei and Taprandich. That he did have the agreement between them and Hughes. That the land user of the land was for Agricultural purposes and the 6 appeared before the board on the 12/8/1969. That he did have the application for the consent but would be able to produce a copy of the consent. That the 6 bought the farm in the name of Sangalo Farm. That he did not have the documents for sale because the 6 have died, the last one died in 2001. That they have approached and verbally requested for the documents from the administrators of the Estate of the 6 deceased purchasers but did not have anything in writing. That Sangalo farm was not registered by then. That he does not have the list of the members of Sangalo farm, but they maintained minutes of the meetings. He stated he did not have the minute book. That Sangalo bought the land in 1979 as per the Plaint. That he has no documents to show LR. 8637/7 and Municipality/ Block 11/59 are related. That the purchase price for the land was shs. 7,900,000. That this amount was raised from among the members. That the receipts of the contributions were destroyed during the demolition. That he has no evidence of the payment of the Purchase price by Sangalo group. That John Hughes died in 1970's. His wife applied in 1980's soon after his death. That the purchase was negotiated with him. He further stated that Sangalo group had an account with Kenya Commercial Bank Kenyatta Street Branch. He was not a signatory of the account. That 2 Sikhs were members of Sangalo farm. That their portion was hived off the main title. That he does not have proof of the subdivision.

PW2 is Joseph Njibu Mwangi who also testified in Kiswahili. He stated that he is a small trader in jua kali centre and lives in Langas Eldoret. PW2's testimony was mostly the same as that of PW1 and I will only set out only the statements that are different from what is already on record.

PW2 states that he bought ¼ acre and paid in installments. He paid kshs. 1,200 on 19/9/1984 for purchase of shares, this was marked as **Exhibit P10**. He stated that the other receipts were lost during the demolition. He produced the certified copy of the Grant in favour of John Joseph Huges and was marked as **Exhibit P1**. He stated that he prays for a declaration that he is the allottee of a portion of the subject land and to be awarded damages for unlawful eviction. He also prays for the nullification of the certificate of lease and costs of the suit.

On cross-examination PW2 states that he is 49 years of age. That the property was transferred in 1969 when he was 14 years and was a student. That he only heard of the purchase but was not party to it. He did not see any purchase documents. That Sangalo Farm bought the subject land from John Joseph Hughes. That the land was acquired by Sangalo farm and was sold to them by Sangalo Estate. That he could not tell the difference between the two firms. He did not know whether they were registered. He does not know who the directors of Sangalo Estate were. He only met one Maina in 1984. He did not know his other names. That Maina is no longer alive and he did not know when he died. That the receipt he was issued with indicates he paid for Sangalo Shares. It has no reference to any land. That at the time he was paying he was shown other names who were acquiring land and he was shown land reference number. That he has not paid any money to Hughes or his family. That he built his plots but did not have any approval; he did not pay any rates.

He stated that he carried out a search on LR. 8637. That he acquired 8636/7. That he carried out a search on the property of John Joseph Hughes. He stated that may be that is why the numbers differed.

PW3 Teresia Mumbi Njoroge and she testified in Kiswahili. She states that she is a farmer and lives in Kiyambuyo Nakuru. That she had a farm at Rai Ply, her plot was part of Sangolo farm LR 8822 Uasin Gishu. That her plot was ¼ an acre, she bought from Samson Bitok in 1983. She had an agreement dated 12th September 1983 marked as **Exhibit P11**. She built a house in 1983. That on 19.4.1991 a bulldozer belonging to the 1st Defendant razed down our houses and they were evicted. That they were not served with any notice. That she seeks her land and damages for unlawful eviction.

On cross-examination PW3 testified that she does not know how to read and her eyes cannot see properly. That Bitok gave the plot LR. No. 8822. He was a director in Sangolo. That he did not show her title deed. She built a mud hut. That Bitok died, he was one of the Plaintiffs in this suit. After the testimony of the three witnesses above the Plaintiffs closed their case.

One witness testified on behalf of the 1st Defendant Company.

DW1 was Jaswat Singh Rai testified in English. He stated the he works with Rai Plywoods (K) Ltd where he is the Managing Director since 1993. That he has been a director since 1972 -1993. That they manufacture wood sheeting, sacks and foam mattresses. Their factory is located in Eldoret and they started in 1973.

He testified that the Property known as Municipality/ Block 11/59 is registered in the name of 1st Defendant. That the Plaintiffs' **Exhibit P3** is a copy of the original title. That the piece of land is 26.82 HA and was issued on 27.1.1987. That they received an allotment from the Government as per **exhibit P2** dated 26.11.86 written by the Commissioner of Lands and addressed to the 1st Defendant. They paid the amount in the letter. That there were no occupants on the land at the time it was allotted to them, that they took possession in 1985-1986. That there was no other person on the land and no one raised any objection. They have erected a factory on the land. They started construction in 1985-1986. That the municipal council objected when they started building and that they had to get permission. That the council later approved the plans. That the 1st Defendant is still in occupation and was never interrupted. That it is impossible that the Plaintiffs were on the land in 1991. He denies that the Plaintiffs were evicted in 1991 or at all. He said that he has not heard of Sangolo. That to his knowledge the property never had any other registration number. That the Bulldozer registration No. KSE 448 was never owned by the 1st Defendant. That they were never invited by the District commissioner and were not aware of such meeting. He prays that the suit be dismissed with costs.

On cross-examination he stated that the certificate of lease was issued when he was the M.D. that his co-director Jasbir Singh applied for the land. He stated in reference to **Exhibit P1** that he has not seen that Grant. That there was no earlier allotment letter to Municipality/ Block 11/59. It was for unsurveyed plot after survey they got the letter of allotment. They took possession in 1985. That they have 2 adjacent plots. He states that on block 59 there were no people. That he was not aware of any demolished structures, he did not hear about it. That he was not aware of any meeting between his father and the D.C about evictions. That they have bulldozers but they did not use and did not evict the Plaintiffs. That he is conversant with these facts because he has been involved in the Company since 1973.

That they identified the land which was vacant and belonged to the Government meant for industrial development. That they were given direct allocation and they become registered owners. That in 1991 they did not ask the D.C or police to evict people, it is not true. That they were in occupation and the land was fenced.

The defense closed its case after this single witness.

The parties by consent agreed to file and exchange written submissions.

Counsel for the Plaintiff in his submission reiterated the averments in the plaint and the testimony of the Plaintiffs' witnesses. Counsel for the Plaintiff submitted that the land claimed by the Plaintiffs is the same as the one occupied by the 1st Defendant, and if this is not the case the 1st Defendant should not have had

any business defending the case. On whether the 1st Defendant's title can be subject to challenge as a first registration under section 143 of the Registered Land Act (cap. 300) counsel submitted that the said section has a provision protecting the rights of persons in possession or actual occupation and is in the nature of overriding interests. He further submitted that the land was not government land as it was granted to a previous owner and evidence was submitted to this effect. He states that no compulsory acquisition took place. Counsel argues that the Plaintiffs were forcefully evicted and the 1st Defendant having acquired interest in the land should have approached the Court for eviction orders. Counsel in support cited the case of *Beatrice Yagan VS. Joseph Yator C.A Application No. 164 of 1997.*

Counsel submits that the Plaintiffs are entitled to general damages. He argued that the acts of the 1st Defendant vis-a-vis the interests of the Plaintiffs over the suit land entitles the Plaintiffs to general damages. He cited the case of *Charles Wachiuri VS Joseph Peter Kuria & Others HCCC No. 90 of 1993.* In this case the Court gave general damages to the Plaintiffs who were evicted and their properties destroyed. Counsel submits that the Plaintiffs herein to be awarded general damages of KShs. 500,000.

Counsel Oscar Eredi of office of the Hon. Attorney General filed submissions on behalf of the 2nd and 3rd Defendants. The submissions give a summary of the Plaintiffs claim. Counsel submitted that the Plaintiffs did not submit any proof of ownership of the suit land but in the contrary submitted ownership by a third party Dorothy Eugene Huges. She was not made a party to these proceedings. Also that the Company Sangalo farm which the Plaintiffs claim to have sold the land to them was not a party to these proceedings. The witness who testified on behalf of the Plaintiff did not know the legal status of Sangalo farm. That they could not establish the nexus between LR. 8637/7 and Municipality/ Block 11/59. That PW1 could not distinguish between LR No. 8637/7 and LR No. 8636/7. That PW3 who said to have bought ¼ acre plot stated that the land she bought is Plot 8822.

Counsel further submits that the Plaintiffs have not proved their case to the required standards. That the Plaintiffs failed to produce any evidence that they bought the suit land. That they never explained why they did not process title documents to the land they claim; they failed to enjoin the registered owner and Sangalo farm to these proceedings; that they did not prove salient facts of fraud to have the title to the suit property cancelled. Counsel submits that the Plaintiffs claim lacks merit and should be dismissed with costs.

I have considered all the testimonies of the witnesses and the submissions by counsel. The Plaintiffs claim that Sangalo Farm also known as Sangalo Estate and Sangalo Company bought the suit land sometime in 1969 from John Joseph Hughes and subsequently sold small parcels to shareholders. That the Plaintiffs settled on the land and developed houses. That they were evicted by the 1st Plaintiff forcefully and without notice in 1991. The Plaintiff produced the certified copy of the Grant in favour of John Joseph Huges and was marked as **Exhibit P1**. The Plaintiffs claim that the 1st Defendant acquired a title to the suit land being title known as Municipality/ Block 11/59 **Exhibit P3** is a copy of the original title. The Plaintiffs pray that the title of the 1st Defendant be cancelled and for a declaration that they are the owners of the suit property. They also pray for damages for the unlawful eviction and costs of the suit.

The 1st Defendant on its part that it is the registered owner of the known as Eldoret Municipality/ Block 11/59. That the piece of land is 26.82 HA, they received an allotment from the government as per **exhibit P2** dated 26.11.86 written by the Commissioner of Lands and addressed to the 1st Defendant. They paid the amount in the letter. That there were no occupants on the land at the time it was allotted to them, that they took possession in 1985-1986. That there was no other person on the land and no one raised any objection. They have erected a factory on the land. They started construction in 1985-1986. DW1 stated that he was a director of the 1st Defendant since 1973. He did not know of any evictions. He stated that the land was fenced and had no occupants. He also stated that the land did not have any different registration number.

The Plaintiffs claim is merely based on verbal rather than documentary evidence. The Plaintiffs have failed to produce any supporting documents to show that they bought the suit land from the original owner John Joseph Huges. The Plaintiffs produced in evidence a certified extract of the Grant LR. 8637

(I.R 10837). It is registered in the name of Eugene Dorothy Hughes as Executrix. The entry was registered in 1980. I note that there is nothing in the title to show any purchasers interest on behalf of the Plaintiffs.

The court is also put in difficult position to determine whether LR. No. 8637 as Eldoret Municipality/ Block 11/59 refers to the same parcel of land. This is a matter that could be best resolved through a survey report or expert evidence of a surveyor. The Plaintiff failed to produce any evidence to persuade the court that the 2 parcels of land are the same.

On the other hand the 1st Defendant has been allocated the land Eldoret Municipality/ Block 11/59. They were first issued with a letter of allotment for unsurveyed plot on 26.11.1986. They paid the premium and were issued with a certificate of lease. From the title documents their land is 26.82 HA. L.R. No. 8637 is 344 Acres. Accordingly the court cannot just assume and believe the Plaintiffs words without any evidence that the 2 parcels are one and the same. Such an overlap should have been noticed by the Physical planning Department of the Government at the time the subsequent title was being issued.

With the aforesaid evidence, can the court go ahead and cancel the 1st Defendants Title as prayed by the Plaintiffs? I am not persuaded at all that the Plaintiffs have demonstrated any tangible evidence which can annul the title of the 1st Defendant. No grounds of fraud in the acquiring of the title by the 1st Defendant has been alleged and none has been proved to the satisfaction of the court to warrant such drastic orders. The Plaintiffs claim with regard to prayer 1 therefore fails.

The Plaintiffs have failed to produce any supporting documents to show that they bought the suit land from the original owner John Joseph Hughes. The Plaintiffs produced in evidence a certified extract of the Grant LR. 8637 (I.R 10837). It is registered in the name of Eugene Dorothy Hughes as Executrix. The entry was registered in 1980. I note that there is nothing in the title to show any purchasers' interest on behalf of the Plaintiffs. The Plaintiffs pray that this court gives a declaration that the Plaintiffs have a purchaser's interest in the land and the second and third Defendants be ordered to issue a certificate of lease Grant IR 10837 in the name of the Plaintiffs and or their agents or trustees. The Court is being called to take away the proprietary rights of the registered owner of the land without according her audience.

If it is the case of the Plaintiffs that they acquired the land by way of adverse possession due to their long and uninterrupted occupation and that the registered owner cannot be traced then they should have brought the right proceedings for adverse possession. That may have been the only legitimate avenue to the Plaintiffs to assert the rights they are claiming. I am not persuaded that the Plaintiffs are entitled to prayer No.2 in the plaint.

The third prayer is for general damages for wrongful eviction. The eviction took place according to the Plaintiffs on the 19.4.1991. This claim was filed on 5.4.2001 that is more than 10 years later. The Plaintiffs who are 254 in number claim that their houses have been demolished by a bulldozer belonging to the 1st Defendant. This has been denied by the 1st Defendant. The burden of proof is on the Plaintiff to show that the demolitions actually happened and the extent of damages for the court to determine to quantum of damages payable. No evidence has been submitted by the Plaintiffs to show that the evictions and demolitions happened. There are no pictures of the demolitions; there is no evidence of what kind of structures that were demolished. The court has been asked to be guided by the decision in the case of ***Charles Wachiuri VS Joseph Peter Kuria & Others HCCC No. 90 of 1993*** where the court awarded kshs. 250,000 to persons who were evicted and their houses demolished.

I am not persuaded that the court can give orders putting pecuniary burden on the Defendants without evidence that the Defendants actually carried out the evictions.

The Plaintiffs in this case brought a case with no foundation and their allegations cannot hold without evidence.

The upshot is that the Plaintiff's case is dismissed with costs to the Defendants.

DATED AND SIGNED AT NAIROBI ON THIS 10TH DAY OF AUGUST 2012

M. K. IBRAHIM
JUDGE

DATED AND DELIVERED AT ELDORET ON THIS 31ST DAY OF OCTOBER 2012

F. AZANGALALA

JUDGE

In the presence of: Mr. Esikuri h/b for Mr. Watindi for Plaintiff

Ms Khayo for 1st Defendant

Mr. Ngumbi for 2nd & 3rd Defendants