



**Muturi v Hamza (Environment and Land Case Civil Suit  
151 of 2015) [2022] KEELC 3179 (KLR) (8 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3179 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE CIVIL SUIT 151 OF 2015**

**MN GICHERU, J**

**JUNE 8, 2022**

**BETWEEN**

**SAMUEL KUNGU MUTURI ..... PLAINTIFF**

**AND**

**HADIJA HAMZA ..... DEFENDANT**

**JUDGMENT**

1. Samuel Kung'u Muturi, the Plaintiff, seeks the following reliefs against Hadija Hamza, the Defendant;
  - a. A declaration that the Plaintiff is the rightful owner of Plot No. 502 Residential Bulbul Trading Centre having been allocated the suit plot vide a letter of allotment dated 9/2/2004.
  - b. A permanent injunction restraining the Defendant either by herself, her employees, servants and or agents from transferring to third parties, trespassing into, entering onto, committing acts of waste, alienating and or interfering with the Plaintiff's quiet and peaceful occupation of the suit premises.
  - c. Costs of the suit.
  - d. Any other relief the Court may find just and expedient.
2. The Plaintiff's case is as follows. He is the registered owner of the suit land which was allocated to him vide a letter of allotment dated 9/2/2004 issued by the County Council of Olkejuado who also authenticated the said letter.

On 28<sup>th</sup> September, 2015, the Defendant trespassed onto the land and started putting up structures thereon. It is for this reason that the Plaintiff filed this suit.

In support of his case, the Plaintiff filed the following evidence;

- i. His own witness statement dated 2/11/2015.



- ii. Copy of letter of transfer of the suit plot from Solitei Seno to the Plaintiff. The letter is dated 9<sup>th</sup> February, 2004.
  - iii. Copy of rates clearance Certificate dated 10/2/2004.
  - iv. Copy of summons dated 9/6/2009 issued to the Defendant by the Administration officer Ngong Division.
  - v. Copy of receipt for transfer fees dated 10/2/2004.
  - vi. Copy of receipt dated 9/2/2004 for plot survey, rent and plot identification fees.
  - vii. A bundle of 8 receipts for rent penalties and rates issued to the Plaintiff by the County Council of Olkejuado. They dated between the years 2007 and 2015.
  - viii. Four letters dated between November, 2012 and April, 2014 concerning encroachment of the suit premises by the Defendant.
3. The Defendant through her counsel on record filed a written statement of defence dated 21/8/2017 and contends that she is the owner of plot number 523 Residential Bulbul Trading Centre and she has not trespassed on the Plaintiff's property. She denies all the averments in the plaint.

In support of her case, the Defendant filed the following;

- i. Her own witness statement dated 4/6/2019.
  - ii. Copy of letter of allotment dated 17/11/2011 for plot number 523 Bulbul Residential.
  - iii. A bundle of four (4) receipts issued between 2012 and 2014 for rent and penalties issued to the Defendant for her plot.
  - iv. Copy of letter dated 9/4/2014 saying that the valid owner of the plot is the owner of 502.
  - v. A bundle of 10 letters all concerning the resolution of the dispute between the parties.
4. At the trial, both parties testified reiterating what is contained in their witness statements and documents. Also to testify was the County Surveyor Jonathan Oseur. His evidenced is to the effect that the Plaintiff owns L.R.No. 502 which was transferred to him by Stephen Solitei Seno, the original allottee. He was also categorical that L.R. No. 523 does not exist either on the ground or in the County Archives or records.
5. Counsel for the parties filed written submissions on 18/5/2022 and 28<sup>th</sup> May, 2022 respectively.
6. I have carefully considered all the evidence adduced in this case by both parties including the witness statements, documents and oral evidence adduced at the trial.

I have also considered the submissions by learned counsel for the parties.

I find that there is only one issue to be decided in this case namely, who according to the evidence adduced has a better claim to the suit plot No. 502 Residential Bulbul Trading Centre, than the other.

I find that the Plaintiff has a better claim to the suit property than the Defendant for the following reasons;

Firstly, the allocating authority, the Olkejuado County Council, recognizes the Plaintiff as the lawful allottee. The evidence by the County Surveyor is very authoritative and unchallenged. It is the official statement on the ownership. Any other evidence is unofficial and therefore not authentic.



Secondly, the Plaintiff has a better explanation as to how he came to own the land. It was transferred to him officially by Stephen Solitei. All the requisite fees was paid and receipts issued.

The Defendant does not have similar evidence that goes to the root of the title.

Thirdly, the Plaintiff's plot exists on the ground while that of the Defendant does not. If there is no evidence of the Defendant's plot on the ground, how then can she say that she has lived on the plot ever since she was a child? She has not been able to prove this.

For the above statement reasons, I find that the Plaintiff has proved his case against the Defendant to the required standard of a margin of probabilities.

I therefore enter judgment for the Plaintiff as prayed for in the plaint.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 8<sup>TH</sup> DAY OF JUNE, 2022.**

**M.N. GICHERU**

**JUDGE**

