



**Kool v Naimodu & another (Environment & Land Case
347 of 2014) [2022] KEELC 3738 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 3738 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 347 OF 2014**

JM MUTUNGI, J

JULY 28, 2022

BETWEEN

LETTATI OLE KOOL PLAINTIFF

AND

LEGORIA OLE NAIMODU 1ST DEFENDANT

SERAH WANJIKU NJUGUNA 2ND DEFENDANT

JUDGMENT

1. The plaintiff instituted the instant suit vide a plaint dated December 18, 2014 filed in court on the same date. The plaintiff's claim against the defendants jointly and severally was for:-
 1. A temporary injunction in the interim and a permanent injunction in the long term to restrain the defendants by themselves their agents, servants, employees or others whosoever from building upon, subdividing, leasing out, selling, transferring, developing, charging or dealing in any manner in the property known as Oljorai phase II Plot No 1559.
 2. An order for eviction of the defendants.
 3. Costs of this suit together with interests at court rates.
2. The plaintiff averred that he had in the year 2000/2001 been allocated by the government through the department of Land Adjudication and Settlement amongst other allottees, a parcel of land in the Agricultural Development Corporation (ADC) land at Naivasha measuring approximately 10 acres being Oljorai Phase II Settlement Scheme plot No 1559. The plaintiff averred that he took possession of the plot after he was allocated but stated that as he would routinely move out of the area in search of pasture for his livestock during the dry spells, he invited one Salantoi Ole Naimodu the father of the 1st defendant to be looking after his plot during such absences. The plaintiff further stated in June 2013



in the presence of witnesses he voluntarily agreed to give to the said Silantoi Ole Naimodu a portion of 2 acres out of the suit property to utilize.

3. The plaintiff further averred that the 1st defendant, apparently utilizing the information contained in the agreement giving father a licence over 2 acres which had been reduced into writing fraudulently caused the plaintiff's plot, No 1559 to be allocated to him and thereafter proceeded to sell the land to the 2nd defendant. The plaintiff stated that during the month of December 2014, on return to his land after some absence, he found the 2nd defendant had occupied the land which had been fenced off, which precipitated the institution of the instant suit.
4. The defendants filed a statement of defense dated May 8, 2015. The 1st defendant contended that he was the lawful owner of plot No. 1559 Oljorai Phase II settlement Scheme having been allocated the same on or about August 16, 2010 by the Director of Land Adjudication and Settlement. The 1st defendant averred that he took possession of the plot on allocation and that he had sold a portion thereof to the 2nd defendant. The defendants further averred that the license alleged by the plaintiff in the plaint related to land parcel No 1576 Oljorai and not the suit land. The defendants denied the allegations of fraud against them in the plaint and asserted they were in lawful possession and use of the suit property.

The evidence by the parties

5. The plaintiff testified as PW1 and called three witnesses in support of his case. The plaintiff testified that he was amongst a group of 21 Masai from Narok who were allocated a portion of 210 acres by the government in the ADC Farm near Naivasha on the recommendation of their then MP Ole Ntimama. He stated that each of them was allocated 10 acres after the land was subdivided. He stated that his plot was No 1559 Oljorai Settlement Scheme and that they were shown their respective plots by the surveyor after the subdivision. The plaintiff testified that after he was shown his plot, he brought his livestock and that he constructed a house on the plot but would during the drought period take his livestock away in search of pasture elsewhere. He stated that he allowed one Silantoi Ole Naimodu to stay in his plot whenever he took his livestock away to look for pasture.
6. The plaintiff testified that during one of the occasions when he stayed away from his plot for nearly one year, he came back and found the said Silantoi Ole Naimodu and the 1st defendant in his plot and both were now laying claim to his land which prompted him to complain to the Chief regarding the trespass on his land. He stated the matter was arbitrated upon by elders and that he agreed to give a portion of 2 acres of his land to Silantoi Ole Naimodu to cultivate and that the agreement was reduced into writing as per the letter dated June 14, 2013 (PEX5”).
7. The plaintiff testified that he subsequently came to learn that he 1st defendant had secretly sold his land when he found people on the land who claimed to have purchased the land from the 1st defendant. The plaintiff stated that he did not know how the 1st defendant got allocated the land yet the land had been allocated to him. The plaintiff in concluding his evidence sought to rely on the witness statement he had filed and on the bundle of documents exhibited as per the list of documents dated December 18, 2014 filed together with the plaint.
8. Under cross examination by Mr. Njoroge advocate for the defendants, the plaintiff reiterated that they were allocated land by the government as a group of 21 Masai through late Ole Ntimama's intervention. He insisted he occupied his plot and that he only left to look for pasture for his cows during the dry spell. The plaintiff affirmed that the 1st defendant was not present at the meeting of September 20, 2013 at the Chief's office when the Assistant Chief issued the letter indicating the plaintiff was the lawful owner of the suit property (“PEX3”). The plaintiff affirmed the chief did not



- sign the letter where he agreed to give 2 acres to Silantoi Ole Naimodu. He further stated when he found the 1st defendant had sold his land he chased him and his father away from the land and the land was now vacant.
9. John Tatue Navankaik (PW2) testified that he had been the area Assistant Chief from 1995 to 2014 when he retired and that he had been a resident in Oljarai settlement Scheme since 1991. He testified that the settlement scheme was used to settle the former workers of the Agricultural Development Corporation (ADC). He stated he was a resident in the area when the scheme was started and that he was also allocated a parcel of land. He explained that when the survey was done he was present and that there was a committee appointed by members that was overseeing the settlement. PW2 stated that he knew the plaintiff and the father of the 1st defendant, Ole Naimodu. He explained that there was a group of 21 Masai who were was allocated 210 acres and each of them was to get a portion of 10 acres. The witness affirmed that the persons listed in the letter dated March 15, 2001 from the ADC (“PEX2”) comprised the group of Masais who were allocated the land and he confirmed the plaintiff’s name on the list was at No 16. He stated he was present in his official capacity as Assistant chief when the group of the 21 Masai were shown their parcels of land. He affirmed the plaintiff was amongst those persons who were shown their land parcels and that his land parcel was No 1559. He said the plots were being shown by the Settlement surveyor in the presence of clan elders. The witness further testified that after the plaintiff had been shown his plot he put a temporary structure thereon.
 10. Pw2 stated he was aware that the plaintiff and the 1st defendant’s father had a dispute over the plot and that he had attempted to have the dispute over the plot resolved. The witness stated the local elders had discussed the dispute and reached agreement as per the letter dated June 14, 2013 (“PEX5”). The witness further affirmed he wrote the letter dated September 20, 2013 to the Adjudication and Settlement Officer Naivasha affirming the plaintiff was the rightful allottee of the suit property and should be issued with an allotment letter.
 11. PW2 was emphatic that the 1st defendant was not among the 21 Masai who were allocated land at Ojorai Phase II. He said the land was allocated as a block of 210 acres for the benefit of the 21 Masai. He denied the land could have been available for allocation in 2010 when the 1st defendant claimed to have been allocated the land. He was categorical that plot No 1559 belonged to the plaintiff as the initial allottee.
 12. Cross examined Mr Njoroge advocate for the defendants, the witness confirmed that he had called the meeting of the elders documented vide the agreement/letter dated June 14, 2013. He explained he did not sign the document since he did not participate in the deliberations. He stated the meeting was not at his office but at the land site. The witness maintained his participation at the time people were being shown their plots was as an officer of the government and to provide security.
 13. PW3 Kennedy Bava testified that he knew both the plaintiff and the 1st defendant’s father. He stated that he had resided on plot 962 Oljarai Settlement since 1992 when he was allocated the plot. The witness affirmed he knew the plaintiff as one of in the group of 21 Masai who were allocated 210 acres at the Oljarai Scheme following the intervention of the late Ole Ntimama. He stated the 210 acres were set aside and subdivided amongst the group of 21 persons each getting approximately 10 acres. He explained that he was a member of the committee that oversaw the allotment and that he was present when the plaintiff was shown the plot No 1559 which had been allocated to him.
 14. The witness further testified that he was aware that the plaintiff and the 1st defendant’s father, Ole Naimodu, had a dispute over ownership of the suit property and that he and other clan elders had made efforts to resolve the dispute. He stated he participated in the deliberations recorded on the letter dated June 14, 2013 (“PEX5”) where they recommended the plaintiff give the 1st defendant’s



- father a portion of 2 acres. He however stated they later learnt the 1st defendant had sold the land. The witness maintained the allotment of the plot to the 1st defendant in 2010 as per the allocation letter dated August 16, 2020 was not valid. He stated all along the 1st defendant never disclosed he had been issued with an allotment letter to the same plot claimed by the plaintiff. He stated at the time the elders were trying to resolve the dispute between the plaintiff and the 1st defendant's father they had no information that the 1st defendant had been allocated the land and/or he had sold the land. He stated the 1st defendant never disclosed.
15. Under cross examination the witness stated he was the chairman of the village elders. He confirmed allocation in Oljorai Scheme started in 1992 but that the group of Masai was allocated the 210 acres in 1995/1996. He affirmed he was the one who drafted the letter /agreement dated June 14, 2013 ("PEX5").
 16. The evidence of PW4, Reuben Chepchieng Kipkebut was a replica of the evidence of PW3. The witness testified that he was a village elder and had resided in Oljorai Settlement Scheme since 1992. He affirmed he was allocated a plot No 964 in the scheme. He affirmed he knew the plaintiff and that the plaintiff was amongst the group of 21 Masai who were allocated a portion of 210 acres in the scheme with each getting 10 acres. He stated the plaintiff's land parcel was plot No.1559. He stated the plaintiff allowed the 1st defendant's father to graze his livestock on his plot and was categorical the 1st defendant's father was not among the Masai who were allocated land. The witness further testified that the 1st defendant's father in 2013 laid claims to the plaintiff's land which necessitated the elders to meet to resolve the dispute and an agreement was reached where the plaintiff was to give a portion of 2 acres to the 1st defendant's father out of his land.
 17. The witness explained that in June 2013 when they, as elders held the negotiations, there was no disclosure that the 1st defendant had been allocated the suit land and/or that the 1st defendant had sold the land.
 18. The 1st defendant testified that the suit property belonged to him. He stated he got the land in 1994 though the land was surveyed in 2001/2002 when the allottees were issued allocation letters and that his letter of allotment was dated August 16, 2010 ("DEX1"). He stated that he paid the requisite allotment charges of Kshs 25,510/= on February 4, 2014 and was issued a receipt ("DEX2"). He said he raised the money by selling a portion of the land (5 acres) to the 2nd defendant. It was his further evidence that the 2nd defendant took occupation of the portion he had sold to her, fenced the same and constructed a pit latrine. He stated that the 2nd defendant later called him claiming there were persons who were disturbing being her. He claimed that from 1994 he had peacefully occupied the land without any disturbance.
 19. The 1st defendant further testified that on June 14, 2013 the plaintiff with other persons came to the ground claiming the plaintiff had been given land in the scheme which they indicated was plot No.1576. He stated the plaintiff claimed it was persons from Narok who had been given land in the locality. The 1st defendant stated it was his father who agreed to give the plaintiff a portion of 2 acres. The 1st defendant admitted he was at the meeting of June 14, 2013 that he said was held at one Peter Ole Sono's hotel. He affirmed the persons present at the meeting signed the agreement.
 20. In cross examination by Mrs Omwenyo advocate for the plaintiff, the 1st defendant maintained the suit land was allocated to him by the ADC because he was a squatter. He stated that it was after he had got the land that he went and brought their cattle. He denied that there was a committee that was involved in the allocation of land. The witness stated he did not know the persons listed in the ADC letter dated March 15, 2001 ("PEX2") save for the plaintiff whom he came to know later. The 1st defendant



acknowledged his father and the plaintiff had a dispute regarding the land which the elders and the chief had made efforts to resolve.

21. The parties following the closure of the trial filed written submissions to ventilate their respective cases. I have reviewed the pleadings, the evidence adduced by the parties and I have considered the submissions of the parties. The following are the issues that emerge for determination in the suit.
 - i Whether the plaintiff was allocated land within Oljorai Phase II and if so whether such land was plot No 1559?
 - ii Whether the 1st defendant was lawfully and validly allocated plot No 1559 at Oljorai Phase II Settlement Scheme?
 - iii Whether the 2nd defendant was a bonafide purchaser for value without any notice of any defect in title and if so whether she acquired good title to the suit property?
 - iv What reliefs should the court grant?
22. The evidence that a group of 21 Masai from Narok were allotted a portion of 210 acres in the Agricultural Development Corporation (ADC) land in Naivasha was not controverted. That the plaintiff was amongst the group of the 21 Masai who were allocated the land and were each to get 10 acres was equally not controverted. Indeed, the Assistant chief (PW2) and the Chairman of the elders (PW3) affirmed that the group of 21 Masai were allocated the land. The ADC vide its letter dated March 15, 2001 confirmed the persons who were allocated the 210 acres. The plaintiff was one of the persons and his name was listed at No 16 in the list.
23. The plaintiff in his evidence testified that they were shown their respective parcels of land as a group by the surveyor on the same day and he thereafter took possession and constructed a house and brought his cattle on the ground. The plaintiff's evidence was supported by the evidence of PW2, PW3, and PW4. The witness were all longtime residents of Oljorai and all had been allocated land in the scheme from the early 1990's. The group of the 21 Masai had a common bond as they were allocated the land courtesy of the late Ole Ntimama who then was their Narok North member of parliament. The plaintiff and his witnesses struck me as truthful witnesses and I accept their evidence that indeed the plaintiff was amongst the 21 Masai who were allocated land in Oljorai Scheme. In particular, PW2 who was the local Assistant Chief was an active participant when the allottees were being shown their respective parcels of land, as by virtue of the office he held, it was natural that he would have been involved if for nothing else for purposes of ensuring there was maintenance of law and order. On the evidence adduced by the plaintiff I am satisfied he was one of the allottees of land in the Oljorai Phase II Settlement scheme.

What land was the plaintiff allocated?

24. Although the plaintiff claimed to have been allocated plot No 1559 Oljorai Phase II Settlement Scheme, he did not produce any documentary evidence to support this assertion. The 1st defendant produced a letter of offer/allotment dated August 16, 2010 from the Director of Land Adjudication and Settlement indicating he had been allocated plot No 1559 Oljorai phase II Settlement Scheme. The letter dated March 15, 2001 from the ADC confirming the group of 21 Masai had each been allocated 10 acres out of the 210 acres set apart for them, did not give particulars of the plot that each had been allocated. Was the plot No 1559 allocated to the 1st defendant the same plot that had been allocated to the plaintiff? PW2, the local Assistant chief and PW3 who was the chairman of the village elders, stated that they were present when the plaintiff was shown his plot and they insisted that the plaintiff's plot was plot No 1559. The witnesses stated the plot in regard to which the plaintiff and



the 1st defendant's father had a dispute was plot No 1559 and it was the plot the plaintiff was shown. At the time in June 2013 and September 2013 when there were efforts by the Assistant chief and the elders to resolve the dispute, it is clear the dispute related to plot No.1559 as per ("PEX3 & 5"). The 1st defendant and his father were at the meeting of 14th June 2013 when the elders reached agreement that the plaintiff should give the 1st defendant's father a portion of 2 acres from the suit land. The 1st defendant, if indeed he had been allocated plot No. 1559 on August 16, 2010 and he had the letter of allotment he did not make disclosure which puts to question whether he in fact had such a letter at the time. The Assistant Chief and the elders were emphatic that neither the 1st defendant nor his father made such disclosure. The Assistant chief knew the plot No 1559 to belong to the plaintiff from the 1990's when the plots were allocated.

25. The plaintiff in his evidence stated he had occupied the plot since allotment and only used to be away for short periods during the drought season and during such periods he used to leave the 1st defendant's father to look after the land until 2013 when the 1st defendant's father started making ownership claims prompting the plaintiff to seek the intervention of the chief and the elders. On the evidence adduced by the parties, I am satisfied and persuaded that the plot allocated to the plaintiff is the same plot that the 1st defendant claimed was allocated to him being plot No 1559 Oljorai phase II settlement Scheme. The plaintiff may not have been issued with any allotment letter but it is clear and evident that he was allocated and shown the plot on the ground and that he took possession of the same. It is not understandable why, if the 1st defendant had the letter of allotment issued to him on August 16, 2010, he failed to disclose to the elders who on June 14, 2013 were inquiring into a dispute respecting the plot between his father and the plaintiff. The 1st defendant participated in the elders meeting together with his father and they both signed the agreement reached by the elders. My view is that the 1st defendant did not, as at that time, have the letter of allotment and the indication is that the letter of offer/allotment may have been backdated as there is no explanation as to why he kept the same a secret. It is noteworthy that although the letter of offer required that the allotment charges of Kshs 25,510.00 be paid within one year, the 1st defendant did not make any payment until February 4, 2014 when he paid Kshs 25,000/= as per the exhibited receipt.
26. Having made a finding that it was the plaintiff who was allocated plot No 1559 Oljorai Phase II Settlement Scheme, it is my determination that the 1st defendant could not have been validly allocated the same plot in 2010. The allocation of the plot to the plaintiff is well supported by the evidence. The plaintiff was among the group of the 21 Masai from Narok who were allocated 210 acres which was shared amongst them each getting 10 acres. The plots on subdivision were shown to each of the 21 Masai and the plaintiff took occupation of his plot which is now the plot No 1559 under dispute. The letter from ADC dated March 15, 2001 identified the group of the 21 Masai who were each allocated 10 acres and the plaintiff was one of the allottees. The land allocated to the plaintiff could not have been available for reallocation to the 1st defendant. The 1st defendant and his father were not among the 21 Masai who were the beneficiary of the 210 acres. In the premises and having regard to the evidence I have no hesitation in finding and holding that the 1st defendant was not lawfully and validly allocated the suit land vide the letter of offer dated August 16, 2010. The allotment was null and void and ought to be cancelled.
27. As I have found that the purported allotment to the 1st defendant was a nullity, it follows that he did not acquire any interest in the suit property that he could sell to the 2nd defendant. It is not apparent whether the 2nd defendant carried on any due diligence. In 2013 there is documented evidence of a dispute touching on the suit property that was handled both by the local administration and the local elders. The 1st defendant and his father participated in the meeting of June 14, 2013. The Assistant Chief vide his letter of September 20, 2013 wrote to the Land Adjudication Settlement



Officer, Naivasha affirming the plaintiff was the valid allottee of plot No 1559 and requested that he be issued with an allotment letter. In my view had the 2nd defendant carried out appropriate due diligence, she would have discovered the suit land had a dispute pitting the plaintiff and the 1st defendant's father. On that account, I am not satisfied the 2nd defendant was a bonafide purchaser for value without any notice. There is no evidence that the 2nd defendant made any inquiries from the Adjudication and Settlement Office and/or that she made any inquiries from the local residents respecting the ownership of the suit property. The 2nd defendant never gave any evidence and it is not evident what due diligence she did before entering into the sale agreement.

28. The upshot is that I find and hold that the plaintiff has proved his case on a balance of probabilities I enter judgment in favour of the plaintiff and make the following final orders: -
- i. A permanent injunction is hereby issued restraining the defendants by themselves from in any manner whatsoever dealing with and/or interfering with the property Oljorai Phase II plot No 1559 belonging to the plaintiff
 - ii. The defendants are ordered to vacate from land parcel Oljorai Phase II Settlement Scheme plot No 1559 within the next 30 days from the date of this judgment failing which an eviction order to issue on application by the plaintiff.
 - iii. Each party to bear their own costs of the suit.

JUDGMENT DATES SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28TH DAY OF JULY 2022.

J M MUTUNGI

JUDGE

