



**Gitau v County Government of Nairobi; Awinga (Interested Party) (Environment & Land Petition 31 of 2018) [2022] KEELC 12836 (KLR) (30 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 12836 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION 31 OF 2018  
LN MBUGUA, J  
SEPTEMBER 30, 2022**

**BETWEEN**

**NANCY WAIRIMU GITAU ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF NAIROBI ..... RESPONDENT**

**AND**

**CHRISTINE AKOTH AWINGA ..... INTERESTED PARTY**

**JUDGMENT**

1. Vide a petition filed in court on April 24, 2018, the petitioner claims that she is the owner of a parcel of land identified as Plot No P 268 at KCC Village Squatter Settlement Scheme. She bought the land on January 7, 2016 from one Isaac Thige who in turn had been allocated the land by the respondent on January 8, 2002. She contends that after the purchase, she took over the possession of the land and constructed thereon.
2. However in December 2017, the interested party came to the property claiming the same through an allotment issued by the respondent on November 15, 2015 for parcel Nairobi Block 168/319.
3. That in February 2018, the respondent commenced the process of issuing titles to the allottees of the land of which, only the petitioner availed herself as the owner of the suit plot and there was no dispute over the same. However the petitioner came to learn that the interested party too had applied to be issued with a lease by the respondent.
4. The petitioner contends that the decision of the respondent to reallocate Plot No 319 formerly Plot No P 268 is a gross violation of the constitutional rights of the petitioner who stands to suffer irreparable losses and damage.



5. The petitioner avers that she is entitled to own the suit land as per Article 40 of the constitution, that she is also entitled to fair administrative action and due process as set out under Article 47 of the Constitution and that she has a right to legitimate expectation.
6. The petitioner therefore prays for the following orders:
  - a. A declaration that the petitioner's fundamental rights and freedoms as enshrined under Article 25,40 read with 260, and 47(1) of the Constitution of Kenya 2010, have been contravened and infringed upon by the Respondent.
  - b. An order of *certiorari* does hereby issue to place before this honourable court and quash the decision of the respondent dated November 13, 2015, reallocating the petitioner property Plot No Nairobi Block 168/319 formerly Plot No P268, to the interested party;
  - c. An order of prohibition does hereby issue against the respondent restraining the respondent from continuing with the process of issuing, processing, signing, and or passing over the lease over Plot No Nairobi Block 168/319 formerly Plot No P268 to the interested party.
  - d. An order of *mandamus* compelling the respondent to upon compliance with any conditions thereof, to issue the lease title over the whole of the property known as Plot No P 268 as is howsoever renamed measuring 0.015 hectares to the petitioner for 45 years from the 2002;
  - e. The honourable court be pleased to award the Petitioner general and exemplary damages against the respondent for breach and violation of her fundamental rights herein guaranteed under Articles 40 read with 260 and 47(1) of the Constitution of Kenya, 2010;
  - f. The costs consequent upon this petition be borne by the respondent and interested party in any event on indemnity basis;
  - g. The honourable court do make such other or further orders as it may deem just and expedient in the circumstances to remedy the violation of the petitioner's fundamental rights.
7. The respondent was represented during the lifespan of the suit when they often sought orders to be allowed to file responses to the petition of which the court indulged them severally (see proceedings of November 19, 2019, September 22, 2020 and November 9, 2021). However, the respondent did not file any response to the petition nor any submissions thereof.
8. The interested party was served through the Standard Newspaper of November 4, 2021 as stated in the affidavit of service dated November 8, 2021. However, no response was filed by this party.
9. The suit was heard through affidavit evidence and submissions.
10. The affidavit filed in support of the petition mirrors the contents of the petition and I need not rehash the same. The petitioner has framed the following issues for determination.
  - i. Whether the petitioner is the proper legal holder of an allotment letter dated January 8, 2002 to the property Plot No P319 formerly Plot No P268.
  - ii. Whether, subsequent to the allotment to Isaac M Thige, the suit property was ever available for a legal and procedural allotment to the interested party.
  - iii. Whether the petitioner is the legally justified recipient of an official lease over the whole of the property known as Plot No P268 as is howsoever renamed measuring 0.015 hectares to the Petitioner for 45 years from 2002.



11. It was submitted that one Isaac Thige was the lawful allottee of the suit property and having accepted the letter of allotment and meeting the conditions set out therein, then his interest in the land crystallized and was therefore in a position to transfer the suit property to the petitioner.
12. To buttress the above point, reference was made to the case of *Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands & 2 others* [2014] eKLR where the court observed that; “In order for an allotment letter to become operative, the allottee was required to comply with the conditions set out therein including the payment of stand premium and ground rent within the prescribed period... This court holds that a letter of allotment does not confer any property rights to a person unless there is acceptance and payment of the stand premium and ground rent.”. The case of *Rukaya Ali Mohamed v David Gikonyo Nambachia & another*; Kisumu HCCA 9/2004 was also cited where the court observed that; “..... once an allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest.”
13. The respondent therefore contends that like all other holders of interests in land based on letters of allotment, he had the legitimate expectation that:-The respondent herein would acknowledge the petitioner’s interest in the suit property by not allotting it to the interested party or anyone else, the respondent would subsequently issue the official lease over the suit property to the petitioner and that the respondent would inform the petitioner of any material change in circumstances and give the petitioner a right to be heard before a decision is made that affects the petitioner’s right.
14. Other cited authorities in support of petitioners suit include: Garissa ELC Case NO 65 of 2017, *General Medical Council v Sparckman* (1943) 2 ALL ER 537, *Republic v G G Gachichi Land Registrar/ Registrar of Titles Exparte Varun Industrial Credit Limited* [2013] eKLR, *Mako Abdi Dolal v Ali Duane & 2 others* [2019] eKLR, *Attorney General v Torino Enterprises Limited* (Civil Application No 84 of 2012) 2022 KECA 78 (KLR) (Civ) (4 February 2022), *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR, *Mirugi Kariuki v The Attorney General* Nairobi Civil Application No 70 of 1991, *Republic v Kenya Revenue Authority Exparte Shake Distributors Limited* HC Misc Civil Application No 359 of 2012, and *Republic vs. Kenya Revenue Authority Ex Parte Universal Corporation Ltd* [2016] eKLR.

## Determination

15. I have considered the pleadings (read petition and supporting affidavit) as well as the submissions of the petitioner in addition to the legal framework and jurisprudence. I find that the main issue falling for determination is whether the petitioner is the rightful owner of the suit land and if the answer is in the affirmative, whether the respondent should be estopped from issuing a lease of that land in favour of the interested party and whether the petitioner is entitled to damages.
16. The gist of the petitioner’s case is that Plot No 268 at KCC Village Squatter Settlement Scheme was allocated to one Isaac Thige in year 2002 and the said allottee later sold that land to the petitioner *vide* a sale agreement dated January 7, 2016. The petitioner has availed the letter of allotment to Isaac Thige dated January 8, 2002 and the sale agreement dated January 7, 2016 as annexures to the affidavit in support of the petition.
17. The petitioner has also availed annexure “NWG –4” which is a bill for survey fees for sh 25,000 dated December 20, 2017 and a receipt for the same was issued by the respondent on the same date. Another payment bill is dated December 20, 2017 for sh 4,500 related to payment of stand premium and a a



receipt too was issued on same date. Another bill is for sh 3,000 for clearance certificate and a receipt to that effect was issued by the respondent. Finally, the petitioner availed a bill of sh 59,000 for ground rent and was again issued with a receipt. All these payments were made by the petitioner in respect of Plot P268 KCC Village.

18. It is quite clear that the respondent had recognized the petitioner as the owner of the suit plot. It follows that that the petitioner has demonstrated that she has acquired the rights and interests over the land in question.
19. The petitioner has availed a document marked as 'NWG 3' which is a letter of allotment dated November 13, 2015 issued to Christine Akoth Owinga for Plot No 168/319 KCC Village. The nexus between Plot 168/319 and plot P 268 has not been established. However, the petitioner claims that the interested party was claiming the same plot on the ground.
20. In the case of *Gitwany Investment Limited v Tajmal Limited & 3 others* [2006] eKLR it was held that:  
“Like equity keeps teaching us, the first in time prevails”
21. In the current dispute, there is no evidence to show the circumstances surrounding the issuance of the allotment letter to the interested party. The Plot No is even different from that of the petitioner. In such circumstances, the earlier allotment which is the one issued to one Isaac Thige must prevail.
22. The petitioner has however not led evidence relating on the source of the allotment to the interested party. The court cannot be left to presume that indeed the two plots are the same. Thus at this point, the court declines to grant any damages. Further, the applicant has not availed sufficient evidence to show that the process of issuance of leases is underway. The court is in the dark regarding the nature and extent of such a process, hence the court cannot grant the orders of prohibition and mandamus sought in the petition.
23. In the end the petition is partially allowed in the following terms;
  1. An order is hereby issued declaring the petitioner as the legitimate owner and allottee of plot no. P268 renamed Plot no Nairobi Block168/319.
  2. The allotment letter issued to one Christine Akoth Owinga on November 13, 2015 in respect of parcel no Nairobi Block 168/319 is hereby cancelled.
  3. Each party to bear their own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Wepo for the Petitioner

Court assistant: Joan

