



Ngigi v County Government of Kiambu & 2 others (Environment & Land Case 778 of 2015) [2022] KEELC 12788 (KLR) (30 September 2022) (Judgment)

Neutral citation: [2022] KEELC 12788 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 778 OF 2015
LN MBUGUA, J
SEPTEMBER 30, 2022**

BETWEEN

JENIFFER MUTHONI NGIGI PLAINTIFF

AND

COUNTY GOVERNMENT OF KIAMBU 1ST DEFENDANT

LAND REGISTRAR KIAMBU COUNTY 2ND DEFENDANT

JOHN KIMANI MWANGI 3RD DEFENDANT

JUDGMENT

1. This suit filed *vide* a plaint dated August 6, 2015 is premised on the grounds that the plaintiff purchased plot LR No Kiambu/ Lari/59 from one Lawrence Kiarie on December 29, 1999. The plot had been allocated to the said Lawrence on October 1993 by the 1st defendant, the then City Council of Kiambu. The plaintiff was then issued with an allotment letter dated September 3, 1998 (KCC/27/98 of October 1998) and has been paying land rent from September 25, 2000 until 2011. She pointed out that on July 10, 2002 the 2nd defendant recommended to the Permanent Secretary Ministry of Local Government that she be issued with a certificate of lease for the suit property.
2. Being desirous of developing the suit property, the plaintiff carried out an official search on January 21, 2014, whereby she discovered that the suit property was registered in the name of the 3rd defendant as LR No Lari/Trading Centre/59 who's lease was granted on June 8, 1998. She contested this allocation as being illegal stating that the said property had already been allocated to her by the date that it was apparently registered to the 3rd defendant.
3. She thus claimed that the 1st and 2nd defendants fraudulently granted the 3rd defendant lease of the suit property while aware that the plaintiff was paying the property's rates and there was recommendation for the plaintiff to be issued with a lease.



4. The plaintiff therefore prays for the following orders:
 - i. Cancellation of the lease/ certificate of lease for LR No Lari/Trading/Centre/59 issued to the 3rd defendant.
 - ii. Rectification of register of title to LR No Lari/Trading/Centre/59 by deleting the 3rd defendant's name and substituting the same with that of the plaintiff.
 - iii. In the alternative, the 1st defendant do allocate to the plaintiff a plot of equal size and value to LR No Lari/Trading/Centre/59 in the neighbourhood of the said plot.
 - iv. Costs of this suit.
5. The 1st defendant in its statement of defence dated May 24, 2016 admitted paragraph 6, 7, 8 and 10 of the plaint which stated that the 1st defendant allocated the suit property to one Lawrence Kiarie in the year 1993, who later sold off the plot to the plaintiff. Consequently the 1st defendant issued the plaintiff with an allotment letter in 1998 and the plaintiff had been paying the land rates/ rent from the year 2000 to 2011. The 1st defendant contested the other allegations of fraud indicating that issuance of titles was the preserve of the Ministry of Lands.
6. The 2nd defendant filed a statement of defence dated June 10, 2020 out of time and apparently the same was not served upon the other parties. The 2nd defendant did not appear before this court to defend their pleading as to why it was filed out of time and not served. As such, the said defence is hereby struck out.
7. The 3rd defendant neither entered appearance nor filed his defence.
8. During the trial, the plaintiff, (PW1) testified and adopted her witness statement dated August 3, 2015 as her evidence. She also produced 8 documents in her list dated August 3, 2019 as her exhibits which were marked as Plaintiff Exhibit 1 – 8.
9. On cross examination by counsel for the 1st defendant, PW1 affirmed that she purchased the suit property from one Lawrence on December 29, 1999. The land was allotted to her in 1998 but stated that she did not have minutes of the counsel meeting where the decision to allot her the suit property was arrived at. She stated that the allotment to Lawrence was issued on October 5, 1993 but she never asked the said Lawrence for payment receipts to the county council and that she also never visited the County Council of Kiambu to confirm whether the said Lawrence had complied with the payments due.
10. The 1st defendant closed its case without calling any witnesses.
11. The submissions of the plaintiff are dated June 8, 2022. It was submitted that in the 1st defendant's statement of defence, they admitted to having allotted the suit property to one Lawrence as well as receiving payment of rates from the plaintiff from the year 2000 to 2011, and as such this was binding as was held in the case of *Synergy Industrial Credit Ltd v Oxyplus International Ltd & 2 others* [2021] eKLR and any information to the contrary was impractical. The plaintiff questioned the circumstances under which the 3rd defendant was issued with a certificate of lease pointing out that it was clear that the plaintiff had been paying rent and rates; had an allotment letter and there was a recommendation for issuance of lease in her favour. It was submitted that even though the 1st defendant had alluded that the allotment to one Lawrence Kiarie had been revoked, no evidence was presented to that effect. What more, the 1st defendant even went ahead to issue the plaintiff with an allotment letter.



12. It was further submitted that the 1st defendant being the custodian of records had made it clear that the plaintiff was the rate payer of the suit property. This buttressed the fact that the plaintiff was the owner. Adding that it was inexplicable how and why if the 3rd defendant was issued with a certificate of lease in 1998, the 1st defendant still demanded rate payments from the plaintiff. The plaintiff therefore avers that the 3rd defendant was fraudulently issued/ acquired the certificate of lease. To support this point, reference was made to the case of *Joseph Kagunya v Boniface K Muli & 3 others* [2018] eKLR which cited *Odunga J in Republic v City Council of Nairobi & 3 others* (2014) eKLR which held:
- “... where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled...”
13. Also cited was the case of *Daudi Kiptugen v Commissioner of Lands & 4 others* which held:
- “...It is therefore necessary for this court to determine how the plaintiff ended up having a lease and certificate of lease in his name and further determine if the government did intend to issue the plaintiff with a lease over the suit land...”
14. The 1st defendant who had participated in the trial did not file any submissions as per court’s directions.

Determination

15. Having regard to the pleadings, the evidence presented before this court and the submissions filed thereof, I find that the issues for determination are:
- i. Whether the certificate of lease for LR No Lari/Trading/Centre/59 issued to the 3rd defendant should be cancelled.
 - ii. Whether the register of title to LR No Lari/Trading/Centre/59 should be rectified by deleting the 3rd defendant’s name and substituting the same with that of the plaintiff;
16. The plaintiff claims to be the owner of suit property known as Plot No 59 Lari having purchased the same from one Lawrence Kiarie in the year 1999. Marked as Plaintiff Exhibit 1 is a duly executed and witnessed sale agreement dated December 29, 1999 entered between the said Lawrence and the plaintiff for the suit property for a consideration of Kshs 130,000. Thereafter the suit property was then allotted to the plaintiff as evidenced by an allotment letter dated April 5, 2001 to the plaintiff (page 15 of plaintiffs bundle) and Plaintiff Exhibit 5 is an allotment letter to Lawrence Kiarie dated November 6, 1993.
17. However, the plaintiff discovered that the suit property was registered in the name of the 3rd defendant vide an official search conducted on January 21, 2014 herein marked as Plaintiff Exhibit 8 which shows that plot known as Lari/Trading centre/59 was registered in the name of John Kimaru Mwangi on June 8, 1998 and a lease certificate was issued thereof. There was no evidence tendered by the defendants to show how the suit property ended up in the name of the 3rd defendant.
18. Marked as Plaintiff Exhibit 6 is an application for change of ownership from the said Lawrence Kiarie to the plaintiff dated July 26, 2000, while Plaintiff Exhibit 2 and 3 are assortment of receipts as evidence of payment of the suit property’s rates by the plaintiff.



19. From the foregoing analysis, there is tangible evidence of how the plaintiff became an allottee of the suit property, but the same cannot be said of the 3rd defendant. On this issue, the Court of Appeal in *Munyu Maina v Hiram Gathiba Maina* [2013] eKLR held:

“... We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

20. In view of the un- controverted evidence of the plaintiff, and taking into consideration the admissions made by the 1st defendant, I find that the plaintiff has proved her case on a balance of probabilities. Consequently, this court hereby invokes the powers bestowed upon it by section 80 of the *Land Registration Act*, and orders that the certificate of lease registered in the name of John Kimani Mwangi the 3rd defendant be and is hereby cancelled and replaced with Jeniffer Muthoni Ngigi. Each party is 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:-

M/s Mwaura for the plaintiff

Nyawira for the 2nd defendant

Court assistant: Joan

ELC CASE NO. 778 OF 2015 (JUDG.) Page 4 of 4

