



**Njongoro v Mirugi & 3 others (Environment & Land Petition  
1374 of 2005) [2022] KEELC 13563 (KLR) (13 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13563 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION 1374 OF 2005  
LN MBUGUA, J  
OCTOBER 13, 2022**

**BETWEEN**

**ISAAC GACHIE NJONGORO ..... PLAINTIFF**

**AND**

**PETER NDUNGU MIRUGI ..... 1<sup>ST</sup> DEFENDANT**

**CITY COUNCIL OF NAIROBI ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. Vide a plaint dated November 15, 2005, amended on October 15, 2012, re-amended on July 4, 2018 and further re-amended on March 7, 2019, the plaintiff seeks the following orders:

- “(i) A mandatory injunction restraining the defendants, 1st defendant either by himself, his agents and or servants from trespassing on, alienating or any other way from interfering with the plaintiff’s plot number 244 also known as Nairobi/block 63/725.
- ii. A declaration that the plaintiff is the legitimate and rightful beneficiary of the suit property of LR No plot number 244 also known as Nairobi/block 63/725 to the exclusion of all others.
- ii. An order directing the district land registrar of titles nairobi to cancel the registration of the first defendant as proprietor of land parcel Nairobi/block 63/725 and register the said property in the name of the plaintiff.



- ii. Damages for conversion and trespass and interest thereon at court rates from the date of filing till payment in full.
  - iii. Cost of the suit and interest thereon at court rates from the date of filing till payment in full.
  - ii. Any other relief deemed just and expedient.”
2. The 1st defendant was served with summons to enter appearance via the Saturday Nation Newspaper of November 26, 2005 but he did not enter appearance or file a defence.
3. The 2nd defendant filed a statement of defence on March 27, 2006 where they generally denied plaintiffs claim. On June 8, 2006, counsel for 2nd defendant addressed the court as follows,

“My clients have just informed me that the plaintiff is the proper allottee as far as their records show”

Thereafter on May 24, 2007, plaintiffs’ counsel informed the court that:

“We wish to withdraw suit against the 2nd defendant because they recognize plaintiff as the only allottee of the suit plot”.

The court proceeded to mark the case of 2nd defendant as withdrawn.
4. Subsequently thereafter, the 2nd defendant continued being represented in court such that when the matter was presented before me for the very first time on June 8, 2022, plaintiffs counsel was claiming that no such order’s of withdraw of the suit were ever made. The court however perused the record and delivered a ruling to the effect that the orders of May 24, 2007 withdrawing the suit against the 2nd defendant still stands.
5. The attorney general (3rd defendant) filed a statement of defence on November 26, 2013 where they generally denied plaintiff’s claim. They were also present in court during the trial but they tendered no evidence.
6. The National Land Commission (4th defendant) filed a statement of defence on February 27, 2019 also denying the claim of the plaintiff. They did not turn up for the trial despite being served.
7. During the trial, the plaintiff testified as PW1. He adopted his witness statement dated November 8, 2012 as his evidence. He also produced the 9 documents in his bundle dated May 24, 2007 as his exhibits 1-9 respectively.
8. The plaintiff avers that in 1992, he was issued with an allotment letter for the suit land plot No 244 also known as Nairobi/Block 63/725, he paid all the requisite fees and was also put in possession. However in year 2005, he conducted a search and found that the land had been registered in the name of 1st defendant whom he did not know. He contends that such registration was malicious, illegal and fraudulent. The plaintiff avers that he has been paying rates for the suit land from the time the same was allotted to him.
9. In his submissions dated July 19, 2022, the plaintiff avers that as the originated valid allottee of the suit land, then he is the indefeasible owner of the said property, noting that his allotment has not been challenged. He therefore contends that the acquisition of the 1st defendant’s title was unlawful and fraudulent and the same ought to be cancelled.



10. In support of this case, the plaintiff has relied on the cases of *Harison Mwangi Nyota v Naivasha Municipal Council & 20 others* [2019] eKLR and *Malier Unissa Karim v Edward Oluoch Odumbe* [2015] eKLR.
11. The submissions of the 3rd defendant are dated July 21, 2022, where it is averred that the plaintiff did not prove that the 3rd defendant was involved in any form of fraud. It was further submitted that under section 77 of the *Registration of Titles Act* cap 281 (Repealed) and section 14(5) of the *land Registration Act*, the land registrar cannot be held personally liable for lawful acts discharged in good faith.
12. In support of their submissions, the 3<sup>rd</sup> defendants relied on the cases of *Mutiria Karumbai Macaw v James Njagi Makembo & 3 others* [2018] eKLR, Civil Appeal No 312 of 2012 *Emfil Limited v Registrar of Titles Mombasa & 2 others* [2014] eKLR and *Sonko v Clerk County Assembly of Nairobi & 12 others* [2022] eKLR.

### Determination

13. I have considered the pleadings, the evidence and the submissions. The issues falling for determination are; Whether the plaintiff should be declared as the owner of the suit property and whether, the title held by the 1st defendant should be cancelled.
14. It is pertinent to note that despite the defences filed by the 3rd & 4th defendants, none of them tendered any defence while 1st defendant did not enter appearance. That notwithstanding, the plaintiff was duty bound by law to formally prove this case. In the case of *Samson S Maitai & another v African Safari Club Limited & another* [2010] eKLR, the court had this to say in relation to proof.
 

“Proof refers to evidence which satisfies the court as to the truth or falsity of a fact. Generally, as we well know, the burden of proof lies on the party who asserts the truth of the issue in dispute.”
15. In the instant matter, the plaintiff has availed the letter of allotment dated February 14, 1992 to assert his claim of allocation of the suit land. He duly paid the stand premium and was issued with a receipt. The receipts on pages 21, 22, and 29 in his bundle confirm that plaintiff duly paid ground rent. The plaintiff also avers that he has been in possession of the suit land since 1992.
16. The copy of search indicates that title for NBI/BLK 63/725 Jamhuri II was issued to 1st defendant on December 13, 2001. I find that by the time the title was being issued to 1st defendant, plaintiff was already the lawful allottee of the suit land. As rightly submitted by the plaintiff, once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment.
17. I therefore find that plaintiff has proved that he is the owner of the suit plot hence the title issued to 1st defendant ought to be cancelled. I however decline to grant any damages in view of the fact that the circumstances under which the title of 1st defendant was issued have not been brought into the picture.
18. I proceed to grant the final orders as follows;
  - i. An order is hereby issued declaring the plaintiff as the legitimate and rightful beneficiary of the suit property of LR No plot number 244 also known as Nairobi/block 63/725 to the exclusion of all others.
  - ii. An order is hereby issued directing the district land registrar of titles Nairobi to cancel the registration of the first defendant as proprietor of land parcel Nairobi/block 63/725 and register the said property in the name of the Plaintiff.



iii. Each party to bear their own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF OCTOBER, 2022  
THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Nyachia holding brief for Mr. Ngugi for the plaintiff

Mwalosi for 3<sup>rd</sup> defendant

Court assistant: Eddel/Joan

