



**Masheti v Wanga (Environment & Land Case 456 of 2014)
[2022] KEELC 13493 (KLR) (12 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13493 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 456 OF 2014
DO OHUNGO, J
OCTOBER 12, 2022**

BETWEEN

ELIKA WAKASA MASHETI PLAINTIFF

AND

FAITH LUCY WANGA DEFENDANT

JUDGMENT

1. Proceedings in this matter commenced through plaint filed on August 22, 2014. The plaintiff averred that she was allocated plot No 114 Block 1/40 Jua Kali Phase II by the Kakamega Jua Kali Association while the defendant was allocated plot No 81 Block 1/40 by the same association. That she started constructing on her plot No 114 in the year 2012 but the construction stalled due to lack of funds. That she noticed in July 2014 that the defendant had started to construct on top of her stalled structure and that the defendant declined to stop despite being asked.
2. The plaintiff therefore prayed for judgment against the defendant for:
 - a. An order that the plot No 114 Block 1/40 belongs to the plaintiff and that the development/ construction of the plot No 114 Block 1/40 by the defendant is unlawful and the same be stopped.
 - b. Costs of this suit.
 - c. Any further orders that this court may deem just and expedient.
3. The defendant filed a defence in which she averred that she started developing the plot after it was allocated to her by the association as plot No 81. She prayed that the plaintiff's suit be dismissed with costs.
4. The plaintiff testified on October 4, 2018, as PW1. She stated that she purchased the parcel of land known as plot No 114 Block 1/40 Jua Kali Phase II Kakamega town from one Phoebe Bilishi in the year



2009. That Phoebe Bilishi duly transferred the plot to her, and she was issued with a shed allotment letter dated November 20, 2011. That she has been paying rates to the Kakamega Municipal Council and later to Kakamega county. She added that she started constructing a shed in the year 2012 with a view to operating a tailoring business in it but the construction stalled due to lack of funds. That she went to check on the plot in the month of July 2014 and noticed that someone was proceeding with the construction from where she had stopped. That with the assistance of the office of Jua Kali Kakamega county she learnt that it was the defendant who was doing the construction and that upon talking to her she refused to stop the construction. That a survey was done, and that the defendant has a different parcel which is plot No 81. She produced a copy of her allotment letter, copies of rates payment receipts and a copy of the defendant's allotment letter.
5. Benard Weche Openda testified next as PW2. He stated that he is a land surveyor and that he surveyed plots 114 and plot 81 in October 2017 and that he prepared the report which he produced. That the plots are opposite each other, are developed, are of the same size and are separated by a road.
 6. The plaintiff's case was then closed.
 7. The plaintiff later passed away on January 15, 2020 and was substituted by her son Vincent Atsango Muhanji, pursuant to an order of the court made on October 14, 2020. The plaint was however not amended following the substitution.
 8. Next on the stand was Faith Lucy Warega Odongo (DW1). She adopted her witness statement dated October 28, 2019 in which she stated that she was allocated a plot by Kakamega County Jua Kali Association February 14, 2013, after applying for it. That the plot was vacant and that she commenced construction of rental houses immediately. That while doing final touches on the building, she was served with summons to enter appearance, plaint, and an application for injunction through her workers who were at the site. She added that the plots at the site belong to Kakamega County Jua Kali Association and that the allotment letter produced by the plaintiff are not genuine because the same were issued by a non-existent organization. That Kakamega Jua Kali Association was dissolved in the year 2010 and hence would not have issued a genuine allotment letter by the November 20, 2011. She further stated that she has developed the plot and hence should be allowed to continue using it.
 9. DW1 produced a copy of her allotment letter and a copy of the certificate of registration of Kakamega County Jua Kali Association. She added that the plot belongs to her and that her father developed it. Under cross examination, she stated that she did not sign the witness statement, that the signature on it is not hers, her father should explain everything about this case and that she does not know about this case. She added that her father processed the allotment letter for her.
 10. DW2 was Richard Momanyi Kondo. He stated that he was chairman of Kakamega County Jua Kali Association from the year 2011 to 2018. That he issued an allotment letter for Kakamega Jua Kali phase II plot No 81 to the defendant and that the allotment letter produced by the plaintiff was not issued by Kakamega County Jua Kali Association since the said association has never been chaired by Patrick Luvusi. That the name of the association was changed from Kakamega Jua Kali Association to Kakamega County Jua Kali Association on the November 23, 2010. That the allotment letter issued on November 20, 2011 should bear the name Kakamega County Jua Kali Association and not Kakamega Jua Kali Association since the latter was dissolved by the year 2010 and hence could not issue any allotment letter.
 11. DW2 went on to state that from the register of Kakamega County Jua Kali Association, neither Phoebe N Bilishi nor Erika Wakasa Masheti appear as owners of plot number 114 and that the said plot belongs to one Alice Nyonje. He produced copies of a letter from registrar of Societies dated August 25, 2012,



letter from Deputy Registrar of Societies dated November 23, 2010 and letter dated June 19, 2018 from Assistant Registrar of Societies.

12. Under cross-examination and re-examination, DW2 stated that the plot mentioned in the plaintiff's letter of allotment and the one in the defendant's letter of allotment are two different plots, and that the defendant should develop and use plot 81 which is developed with a building on it and not 114. He added that he did not know who the owner of plot number 114 was and that the said plot was undeveloped. That their association has had disputes and it has had various chairmen.
13. The defence case was then closed.
14. Parties then filed and exchanged written submissions. The plaintiff highlighted the evidence on record and argued that she had proven her case to the required standard and urged the court to grant her judgment.
15. On her part, the defendant argued that the allotment letter produced by the plaintiff was issued by a non-existent organisation and a stranger who purported to be the chairman of Kakamega Jua Kali Association. That the plaintiff was not entitled to develop the land since she did not have a valid allotment letter. That the defendant had a valid allotment letter, and that the plaintiff's claim was overtaken by events. That, consequently, the plaintiff's case is not proven and ought to be dismissed with costs.
16. I have considered the parties' respective pleadings, evidence, and submissions. The sole issue for determination is whether the reliefs sought are available. Going by prayer (a) of her plaint, the thrust of the plaintiff's case is that plot No 114 Block 1/40 belongs to her and that consequently, the defendant has no right to construct on it. According to her, she was allocated plot No 114 Block 1/40 by the Kakamega Jua Kali Association while the defendant was allocated plot No 81 Block 1/40 by the same association. She contends that the defendant constructed on plot No 114 Block 1/40 instead of plot No 81 Block 1/40 which is what belonged to the defendant.
17. In her statement of defence, the defendant seems to concede that she constructed on the same plot which had been allocated to the plaintiff. She maintains that she validly did so after the association repossessed the plot from the plaintiff and re-allocated it to her as plot No 81 As is abundantly clear, an allotment letter is not title to land. The allottee must meet the conditions of allotment and only upon that would a title issue. See *Wreck Motor Enterprises v Commissioner of Lands & 3 others* [1997] eKLR.
18. The allocating authority in respect of the property in dispute was initially registered as Kakamega Jua Kali Association, under the *Societies Act* (Cap 108). The society's name was later, on November 23, 2010, changed to Kakamega County Jua Kali Association and a certificate to that effect issued. A reading of the letter dated 23rd November 2010 from the Deputy Registrar of societies makes it clear that what took place was merely a change of name and not a winding up. It is thus misleading to say, as the defendant and DW2 claimed, that Kakamega Jua Kali Association was a non-existent organization. Kakamega Jua Kali Association continues to exist, but in the new name of Kakamega County Jua Kali Association.
19. Since allocation of plots is an internal matter of the association, confirmation as to who is entitled to which plot can only emanate from the association. Unfortunately, as confirmed by DW2, the association has had leadership disputes. The two letters of allotment in contention were signed by different chairmen of the association. In the absence of any clear evidence from the association, I am unable to ascertain which letter of allotment is valid.
20. There is one more difficulty. Nothing has been produced to demonstrate that Kakamega Jua Kali Association or Kakamega County Jua Kali Association owns plot No 114 Block 1/40 and that it had



authority to allocate it. There is risk of the court making declarations which would affect persons who are not parties to this case.

21. In view of the foregoing discourse, the plaintiff has not proven her case. She has not demonstrated that she is entitled to the suit property. It follows therefore that the reliefs sought cannot issue.
22. I therefore dismiss the plaintiff's case. Considering the background of the dispute, I make no order as to costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 12TH DAY OF OCTOBER 2022.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the plaintiff

No appearance for the defendant

Court Assistant: E. Juma

