



**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Suit 1251 of 2002**

**GUCOKANIRIRIA KIHATO TRADERS AND FARMERS COMPANY LTD .....**  
**PLAINTIFFS**

**VERSUS**

**THE HON. THE ATTORNEY GENERAL.....**  
**DEFENDANT**

**JUDGMENT**

By a plaint filed in court on 24<sup>th</sup> July 2002, the plaintiff company sued the Attorney General seeking a declaration that,

**“police officers having lost or otherwise misplaced and or destroyed the plaintiff’s documents relating to the plaintiff’s claim to ownership of L.R No. 11571, LAKIPIA, the plaintiff is entitled to obtain a new allotment thereof from the Chief Land Registrar and or the Commissioner of Lands”.**

Paragraphs 2 and 3 show that the Attorney General was sued on behalf of the Commissioner of Police, the Permanent Secretary in charge of Internal Security, and again on behalf of the Chief Land Registrar, the Commissioner of Lands and the Permanent Secretary Ministry of Lands.

The Attorney General entered appearance on 28.8.2002, and subsequently filed a defence on 22.10.2002, which was amended vide amended defence dated 26<sup>th</sup> October, 2003 filed in court on 29<sup>th</sup> September, 2003.

The amended defence brought in paragraphs 2(a) and 5(a) to the effect that

**“the defendant avers that Land Ref. 11571/R is owned by the Government of Kenya by virtue of Notice of taking possession which was registered on 15<sup>th</sup> February 1991”.**

and again,

**“the defendant further avers that indeed Land Ref. 11571/R has never been allocated to anyone and more particularly to the plaintiff herein and the plaintiff is put to strict proof thereof”.**

In court during the hearing of the suit, John Maina Mwangi, the Secretary of the plaintiff company since 1970 testified that, the plaintiff was a land buying company, comprising of 1,500 members. It was registered on 28.10.1970. The Certificate of registration was produced as an exhibit in court.

John Maina recalled that on 14.3.73, some members of the plaintiff company went to State Lodge Nakuru to see the late President Jomo Kenyatta. They asked him for land to buy and their request was granted and the President wrote a letter allocating them the suit land, which they subsequently paid for.

Upon return from Nakuru State Lodge, they kept the letter in their offices, in cross Lane Nairobi but after 2 days some 2 CID Officers visited their offices and confiscated all the files, including the letter from the President and cash money amounting to about Kshs.46,870/= which was kept in the office.

Officials of the plaintiff company started talking to the police asking them to return the files, containing the letter from the President, and the money.

They did not get any of the items taken from their offices by the police. This forced them to file a suit in court in 1983. The witness produced the plaint of that suit as an exhibit. It showed that the plaintiff company sued the 2 police officers and the Attorney General. They sought a refund of the money “**stolen**” from their offices and a return of their documents.

The Attorney General filed a defence but the same was dismissed on 5.10.89, and judgment was eventually entered for the plaintiff company. A decree from that suit, produced as Ex.9 shows that the court directed the defendants to “**return the documents claimed**”.

The plaintiff company again wrote to the 2<sup>nd</sup> President Hon. Daniel Arap Moi, (now retired), complaining about the lack of return of their documents taken by the police and therefore the lack of allocation of land to them, yet they had paid for it. They got a reply to that letter. It was written by the Permanent Secretary, Ministry of Lands, telling them to await the out come of a case which was by then still pending in court. The letter was produced as an exhibit in court.

Because the defendants did not honour the decree issued by the court, directing them to return the documents, the plaintiffs returned to court and filed a Misc. Application No. 978 of 1992, for Judicial Review, seeking the enforcement of the decree. This resulted in the plaintiff company being paid a cheque of monies taken from their offices, plus interest. A copy of the cheque was produced by the plaintiff’s witness as an exhibit. This according to the witness showed that the Government accepted responsibility of the police who broke into their offices and took the letter of allotment and cash.

The witness lamented that though they were refunded the cash, they never got the documents back. These included the letter of allotment by the late President to the piece of land, Solio Ranch Naro Moru, L.R No. 11571. The plaintiff’s witness confirmed that their company had paid for the land.

The witness also explained that they got several letters from the police saying that they could not find the documents. The plaintiff company also went to the Njonjo Land Commission, but their complaint could not be addressed as the Commission was by then winding up.

This forced them to go back to court once more vide this suit, claiming “**a new allotment of land from the Chief Land Registrar and or the Commissioner of Lands, as police officers had lost or otherwise misplaced their documents relating to their claim to the ownership to L.R No. 11571 Laikipia.....**”

The plaintiff’s witness lamented that to date they have not been given any alternative land to Solio Ranch No. 11571 which they paid for in 1973 as a result of which the late President gave them a letter of allotment at State House Nakuru, where they had been invited to, vide a letter dated 10<sup>th</sup> March, 1975, written on behalf of the then President’s Private Secretary/Controller of State House. This letter was produced as Ex. 1 in court.

The plaintiff’s witness confirmed that before filing this suit, they sent a Notice to the Attorney General vide a Notice dated 3<sup>rd</sup> May, 2002. This notice too was an exhibit in court. Thereafter this suit was filed on 24.7.2002.

The plaintiff also served on the Attorney General, “**Notice to admit Documents and Facts**”, under Order 12 Rules 3 and 5 of the Civil Procedure Rules.

The notice was filed in court.

The Attorney General did not respond to Notice. The plaintiff produced a copy of the Registration of Titles Act to Solio Ranch Ltd, L.R No. 11571, showing that on 15.2.1991 long after this land had been allocated to them, the Government of the Republic of Kenya, lodged a caveat to the title claiming “**absolute ownership by virtue of notice taking possession of (No. 1157 11R) marked red in the plan attached to the caveat absolutely**”.

The plaintiff’s witness confirmed that they sent the Statutory Notice to the defendant the Attorney General on 3.5.2002. The witness could not comment on the question that the notice was received in the Attorney General’s office on 9.8.2002. He said that since he does not work there he does not know what happened to the Notice.

Mr. Kaka, State Counsel addressed the court saying that they had no evidence to offer in this suit, as the witness they had was not relevant.

The 2 advocates representing the parties herein filed detailed written submissions by consent. Counsel for the plaintiff reiterated that the plaintiff, which is a land buying company was issued with a letter of allotment, Ex. 1 of land title Number L.R 11571 Laikipia, otherwise called Solio Ranch, on condition that they paid for it, which they did.

The counsel submitted further that the plaintiff’s kept the letter in their offices in Nairobi but that CID officers raided their offices and took their files, containing Ex. 1 and some cash money.

The plaintiff company filed a suit in court against the CID officers and the Attorney General to press for the return of their files containing Ex 1 and cash.

That the plaintiffs won the case as per the judgment delivered on 7<sup>th</sup> June, 1990, and the Ruling of 5<sup>th</sup> October, 1989. these were produced as exhibits in court.

The defendants failed to comply with the decree, forcing the plaintiff’s to more back to court by Judicial Review Proceedings, which finally saw the defendants return the lost cash with interest, but not the documents including letter of allotment, Ex. 1. The plaintiff’s commenced proceedings to have the defendants jailed for contempt, but these were stayed as the correspondence between the Attorney General and the Permanent Secretary Ministry of Land revealed that they were trying to resolve the matter in favour of the plaintiffs.

The plaintiff’s counsel submitted on the law applicable, which he named as Land Acquisition Act, Government Lands Act and the Government Proceedings Act.

As the record shows, the defendant did not call any witnesses as their counsel (Mr. Kaka) said they had no evidence to offer. However, they filed written submissions which stated that the case before the court is incompetent and the same should be dismissed, because the same was filed on 24<sup>th</sup> July, 2002, and the Statutory Notice served on 9<sup>th</sup> August, 2002, after the filing of the suit, which he submitted contravened the provisions of section 13A of the Government Proceedings Act.

The advocate quoted two cases decided by Judges of this court to the effect that clear provisions of a statute should not be ignored and non compliance with provisions of Section 3A, renders any suit incompetent, and the same should be dismissed. Mr. Kaka submitted further that Statutory Notice was **stamped** as received in the Attorney General’s chambers on 9.8.2001, so the suit is incompetent, and should be dismissed.

Mr. Kaka also submitted that the suit is “**res judicata**”, because of the 2 previous suits which the

plaintiffs filed before this one.

I have considered the submissions of both learned counsel, as well as the oral evidence adduced by the plaintiff.

Starting with the statutory notice issued by the plaintiffs before the filing of this suit on 24.7.2002. The Notice was produced as Ex.22, it is dated 3.5.2002; and the plaintiff's witness testified that they sent it to the Attorney General, who in turn said in submissions that it was received on 9.8.2002.

Apart from the submissions, there was no evidence from the defendant to say when the letter was actually received. Was it received and stamped the same day the 9.8.2002 or not?

Both the original and the amended defence stated at para 2 that

**“the defendant tenders his defence without prejudice to his right to argue a preliminary point of law that this suit is FATALLY defective and shall move this Honourable Court for the appropriate orders”**

The defendant's counsel did not argue any preliminary point, and did not call any witnesses. Besides, the plaintiff's counsel sent to the defendant's office **“NOTICE TO ADMIT DOCUMENTS and FACTS”** under Order 12 Rules 3 and 5 of the Civil Procedure Rules. A copy of the Notice was filed in court. One of the documents to be admitted was the Statutory Notice dated 3.5.2002 to the Attorney General from Messrs Khamati, Akhaabi and Co. Advocates, for the plaintiff.

The defendant did not respond to the notice. From this, I find that the contents of the notice, including the Statutory Notice aforesaid were admitted by the defendant. This coupled with the defendant's failure to adduce any evidence at the trial makes me come to the conclusion that the defendant's submission that the statutory notice was received after the suit was filed is **“unreliable”** and I cannot accept it. I also find that the present suit is not **“res judicata”** because the plaintiff had not prayed for a new allotment of land before, and the decree in HCCC No. 212 of 1983, could not entitle him to such a new allotment prayed for in this suit.

The plaintiff company was **“accused”** by the defendant's counsel of not pursuing its rights in asking for the defendants in HC Misc. Application No. 978 of 92, **“to be jailed”** for contempt of a court order directing the defendants to return their documents of title to the suit land.

The plaintiff's witness explained that indeed they pursued contempt proceedings, but in the process, they got a letter dated **14<sup>th</sup> May, 2003**, written by the Permanent Secretary Ministry of Lands and Settlement, to the Permanent Secretary, Secretary to the Cabinet and Head of Civil Service Office of the President, Harambee House. They were still pursuing their land matter, but now **with the present Government**.

The letter was copied to the Chairman of the plaintiff company, as well as the Permanent Secretary, Provincial Administration and National Security, Office of the President, Harambee House, Nairobi.

The letter said in part,

**“I had a long discussion with the representative of Guocokaniriaria Kihato Waders and Farmers Company. There are 3 civil suits which were filed by the company. These are HCCC No. 212 of 1983, HC Misc. Application No. 978 of 1992 and HCCC No. 1251 of 2002. The first two cases were heard and determined by the Court which ordered that the company be paid the money which was taken by CID, and their files which were taken should also be returned. The third case No. 1251 has not been heard. The hearing of this should be hastened and concluded to give us direction to proceed. As matters are now, the Commissioner of Lands has no orders to execute in this matter, given the magnitude of the size of the land being claimed by the company, 58194 acres”.**

From the evidence on record, I am satisfied that the plaintiff company was allocated Solio Ranch by the late President Jomo Kenyatta, vide a letter of allocation which was “**taken**” from their offices by CID officers who raided their offices and also took cash money.

The plaintiff was vigilant in pursuing its rights to recover properties taken from its offices and hence the filing of several suits in court.

I am satisfied that the plaintiff has proved its case on a balance of probabilities and I find judgment for the plaintiff against the defendant as prayed in the plaint, and I hereby declare as prayed that,

*“Police officers having lost or otherwise misplaced and or destroyed the plaintiff’s documents relating to the plaintiff’s claim of ownership of L.R No. 11571, LAIKIPIA, the plaintiff is entitled to obtain a new allotment thereof from the Chief Land Registrar, and or the Commissioner of Lands”.*

I also award the plaintiff the costs of this suit.

Finally, I wish to commend officials and or members of the plaintiff company for the spirited, relentless and brave fight they put up for what they believed was their right to land which they had paid for. Their persistence as evidence revealed, saw them enter almost every office in Government over the years and see several personalities in an effort to voice their complaints. I admired their courage and only hope that the order I have issued today will be obeyed by the relevant Government Ministry to bring this **long standing dispute to an end!**

**Dated at Nairobi this 23<sup>rd</sup> day of June, 2006.**

**JOYCE ALUOCH**

**JUDGE**