



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 1062 OF 2000

**RHODA CHELANGAT KANDIE..... PLAINTIFF**

**VERSUS**

**COMMISSIONER OF LANDS & 4 OTHERS.....DEFENDANTS**

**JUDGMENT**

The Plaintiff herein Rhoda Chelangat Kandie has sued the five Defendants herein in their respective capacities as appearing in the Plaint seeking orders against them, jointly and severally, as relates to her ownership of land parcel No. L.R. 10682 Mambui Township in Kilifi District. The reliefs sought have been slightly amended by the Court for clarity and read as follows:

- “1. A declaratory judgment that Allotment No.75894/IV/28 of 23.07.81 which resulted in the issuance of a Grant in respect of the Mambui Plot No. L.R. 10682 as approved by His Excellency the President on 25.05.91 as initialed in the sketch annexed to the Plaintiff’s application dated 20.05.91 the seaward boundary extended up to High Water Mark of the Indian Ocean. (addition my own)***
- 2. THAT the letter of allotment No.55529/11 dated 30th August 1993 issued to the 5th Defendant to be declared null and void ab initio and any title issued to the 5th Defendant do be declared null and void ab initio.***
- 3. THAT the Commissioner of Lands, Registrar of Titles, Mombasa and the Director of Surveys be ordered to cancel the relevant documents and boundary deed plans relating to the Land between the present High Water Mark and L.R. No.10682 and the area be added to L.R. 10682 and a new grant in respect of L.R. No. 10682 be granted to the Plaintiff which includes the area where the ocean has moved and created dry land between the old and the new High Water Mark without any charges whatsoever.***
- 4. Costs of this suit together with incidental expenses which includes traveling several times by air from Nairobi to Malindi and accommodation expenses in Malindi from 1993 when contravention started at the commercial bank overdraft interest rates of 35% p.a. calculated on monthly rests and based on the value to be quantified by this Honourable.”***

I regret to say that the Plaint as filed presents a most curious piece of pleading which offends the principles of pleading by pleading evidence and law in several paragraphs. The prayers themselves are incomprehensible as drafted and the Court has had to read between the lines in light of the evidence adduced at the formal proof on 28th January, 2003 to decipher what the real issues for determination are.

However, Interlocutory Judgment having been entered against the Defendants on 29th March, 2000 in the case of the 2nd 3rd and 5th Defendants and on 6th February 2000 in respect of the 1st and 4th Defendants which have not been appealed against, I have chosen not to concern myself further with procedural defects.

The Plaintiffs' case is that sometime in 1991 she applied to be allotted an empty plot in Malindi North for development of a hotel vide her letter to the Commissioner of Lands dated 20th May 1991 which application was approved by the then President His Excellency President Daniel Toroitich Arap Moi as endorsed by him on 22nd May 1991. The said letter was produced in evidence as Ex.P.1 and annexed a sketch of the unsurveyed plot in question with a clear boundary along the shoreline of the Indian Ocean. She was then allotted the said piece of land by a letter of allotment dated 14th October 1998 (exb.2) which referred to the plot as an unsurveyed hotel site – Malindi. She was later on 18th December 1998 issued with a Grant, No.31906 which she produced in evidence as exhibit No 4. The Plaintiff duly paid Shs.916,030/= towards the allotment and direct transfer of the parcel of land as evidenced by two official receipts dated 3.11.98 and 23.10.98 both produced in evidence as exhibit No 3. The Plaintiff has stated in evidence that when she later visited the plot which she had previously inspected in 1991 she could not see the sea, the shoreline having receded. She brought the matter to the attention of the Commissioner of Lands and was promised the same would be looked into. She was later to be told that the land between the previous shoreline and the then existing water-mark had been allocated to the 5th Defendant in 1993. The Plaintiff produced correspondence exchanged between herself and the Commissioner of Lands and the same was marked as Exhibits 5,6,7 and 8.

The Plaintiff's contention is that the land allocated to the 5th Defendant rightfully belongs to her as part of the land comprised in her Grant and ought not to have been allocated to a third party at all. She further contends that the said allocation was fraudulent and therefore illegal and the Title given to the 5th Defendant void ab initio. She prays that the same be cancelled and the new portion of land amalgamated to her parcel of land.

In support of the Plaintiff's claim counsel for the Plaintiff submitted, inter alia, the following authorities:

**1. Halsbury's Laws of England 3rd Edition paragraphs 777-781.**

**2. GEFFORED –vs- LORD YARBOROUGH 5 BING. 163**

The law, as clearly stated in the above authorities is that

***“Where the tidal water recedes gradually and imperceptively from the land or land by alluvion or dereliction is added to the dry land or foreshore so that it becomes situate above the low water mark, it belongs, if above the high water mark to the owner of the dry land to which the land is added and, if above the low-water mark, to the owner of the foreshore.*”**

I find that, based on the evidence adduced herein and on the strength of the above authorities, the Plaintiff has, on the balance of probabilities proved her case as regards the ownership of the additional land towards and including the seafront. No evidence was adduced to support her claim for traveling expenses to the tune of Shs.2.5 million or as regards the loan she claims to have borrowed to finance the transaction. The claim for interest on the said sums at 35% per annum is also unsupported by evidence. I am therefore not able to award any damages, which in any event are neither pleaded nor particularized in the Plaintiff.

Accordingly I enter judgment for the Plaintiff against the Defendants jointly and severally for:

**1. A declaration that seaward boundary of the Plaintiff's land as allocated under Letter of Allotment No. 75894/14/28 dated 23.07.91 and as conferred under Grant No.31906 extended upto the High Water Mark of the Indian Ocean.**

**2. The allotment of land to the 5th Defendant under the Letter of allotment No 55529/11 of**

***30.08.93 and the title issued pursuant thereto are hereby declared null and void.***

***3. The Commissioner of Lands, Registrar of Titles, Mombasa, and the Director of Surveys do cancel all the entries and documents including but not limited to the deed plans issued in respect of the land between the High Water Mark and L.R. No.10682 forthwith.***

***4. The Commissioner of Lands do issue the Plaintiff a new Grant to include the area illegally allotted to the 5th Defendant pursuant to the allotment letter No.55539/11.***

***5. Costs of this suit with interest thereon at Court rates from the date of filing suit until judgment.***

Dated, Signed and Delivered at Nairobi this 8th day of June 2005

**M.G. Mugo**

**Judge**

**In the presence of:**

**Mbugua : for Plaintiff**

**N/A : for Defendants**