



**Seventh Day Adventist Church East Afric Union Limited v Allan George Njogu Residence Ltd & another (Environment & Land Case 189 of 2012) [2024] KEELC 3778 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 3778 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 189 OF 2012**

**JM ONYANGO, J**

**MAY 9, 2024**

**BETWEEN**

**THE SEVENTH DAY ADVENTIST CHURCH EAST AFRIC UNION LIMITED ..... PLAINTIFF**

**AND**

**ALLAN GEORGE NJOGU RESIDENCE LTD ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By a Complaint dated 8.12.2004 and amended on 24<sup>th</sup> December, 2004 the Seventh Day Adventist Church of East Africa, sued Allan Njogu Residence Ltd and the Commissioner of Lands seeking inter alia orders for cancellation of titles No. Eldoret Municipality/block 11/14,15 and 16 registered in the 1<sup>st</sup> Defendant's name on the grounds that the said titles were obtained fraudulently.
2. Upon being served with the Complaint and Summons to enter appearance the 1<sup>st</sup> Defendant entered appearance and filed a Defence dated 21<sup>st</sup> December, 2004 denying the plaintiff's claim. The 1<sup>st</sup> defendant averred that the suit property belongs to it and that it holds a title to the same although the Plaintiff was occupying the land illegally.
3. In its Defence dated 11<sup>th</sup> November, 2004 the 2<sup>nd</sup> Defendant denies that it allocated the suit properties to the 1<sup>st</sup> Defendant and states that the allocation of the 3 plots to Elizabeth Jabet Seroney, Christine J. Seroney and Rose Jemutai Seroney on 20<sup>th</sup> June, 1995 was obtained by fraud and misrepresentation as the suit properties had already been allocated to a third party. It therefore prays that the allocation of the plots to Elizabeth Jabet Seroney, Christine J. Seroney and Rose Jemutai Seroney be revoked.
4. The case proceeded for full hearing and the Plaintiff and the 1<sup>st</sup> defendant called their witnesses. The 2<sup>nd</sup> defendant did not call any witness.



## **Plaintiff's Case**

5. The Plaintiff's case is that on 4.3.1974 they made an application to the then Eldoret Municipal Council for the allocation of un-surveyed plots for the purpose of constructing a church and workers' houses. The allocation was approved vide the minutes of a meeting held on 13<sup>th</sup> March, 1974 at minute No. HTD.1974 and demonstrated by a series of correspondence produced by Plaintiff as exhibits. According to the Rental Scheme Plan No. LCH Religious Plots L.R No. 3055, the Plaintiff was allocated plots Nos. Eldoret Municipality/Block 11/14 measuring 0.2100 Ha, Eldoret Municipality/Block 11/15 measuring 0.2376 Ha and Eldoret Municipality/Block 11/16 measuring 0.2376 Ha. The Salvation Army Church was allocated plots Nos. Eldoret Municipality/Block 11/10,11 and 12, while the ACK Church was similarly allocated three plots. The plaintiff constructed a church on plots Nos 16 and 17 and the plaintiff has been in occupation of the suit properties since 1974.
6. In 1996, the plaintiff discovered that the suit properties were registered in the name of the 1<sup>st</sup> Defendant and filed a case against the defendants after negotiations to resolve the dispute with Allan George Kamau, the Director of the 1<sup>st</sup> Defendant failed. The case was initially filed in the High Court as HCCC No. 149 of 2004 and it was subsequently transferred to this court in 2012 after the establishment of the Environment and Land Court.

## **1st Defendant's Case**

7. The 1<sup>st</sup> Defendant's case is that it bought the 3 suit properties from one Zipporah Seroney in 1996 for valuable consideration. It is the 1<sup>st</sup> defendant's contention that the said Zipporah Seroney was allocated the suit property by the Commissioner of Lands. DW1, Allan George Njogu Kamau, the Director of the 1<sup>st</sup> Defendant Company who testified as the sole witness for the 1<sup>st</sup> Defendant stated that he conducted due diligence before his company bought the suit properties. After purchasing the suit properties from Mrs Seroney, the 1<sup>st</sup> Defendant had the same registered in its name on various dates in 1996 as indicated on the Certificates of Lease which were produced as exhibits.
8. The 1<sup>st</sup> Defendant admits that the Plaintiff was issued with a letter of allotment dated 27<sup>th</sup> June, 1989 in respect of plot No. 16 by Eldoret Municipal Council but states that the allocation to the plaintiff never matured into a Certificate of Lease. It is the 1st Defendant's case that after they obtained Certificates of Lease in respect of the suit properties, the plaintiff approached them for negotiations but the plaintiff was not serious. The Defendant acknowledges that the Plaintiff put up structures on the suit property in 1996 although it claims that the said structures are temporary. The 1<sup>st</sup> Defendant admits that the plaintiff has been occupying and the suit property and that the plaintiff has never sought to evict them.
9. Although the 2<sup>nd</sup> Defendant filed a Defence, it did not call any witnesses in support of its Defence. The parties were granted time to file and exchange their written submissions but only the Plaintiff and 1<sup>st</sup> Defendant filed their submissions which I have considered in my analysis.

## **Issues For Determination**

10. Having considered the pleadings, evidence on record together with the exhibits produced by the plaintiff and 1<sup>st</sup> defendant as well as the rival submissions, the following issues arise for determination;
  - i. Whether the allocation of plots numbers Eldoret Municipality Block 11/14, 15 and 16 to the Plaintiff was regularly done.
  - ii. Whether the sale of the suit properties by Zipporah Seroney to the 1<sup>st</sup> Defendant was lawful.



- iii. Whether the subsequent registration of the suit properties in the 1<sup>st</sup> Defendant's name was lawful.
- iv. Whether the Plaintiff is entitled to the reliefs sought.

### **Analysis And Determination**

11. PW 1 who introduced himself as a Church Elder in the Plaintiff Church told the court that the dispute revolves around three plots which were allocated to the Plaintiff by the Eldoret Municipal Council pursuant to the application by the Plaintiff in 1974. The Church immediately commenced construction in the same year. The Church later learnt that the titles in respect of the suit properties had been issued in the name of the 1<sup>st</sup> Defendant and tried to negotiate with Allan, George Njogu Kamau but the negotiations were not successful, prompting the plaintiff to institute this case.
12. Bishop Christopher Misoi of the S.D.A Church who testified as PW2 told the court that the Plaintiff applied for a church plot from the Town Clerk, Eldoret Municipal Council vide a letter dated 4<sup>th</sup> March, 1974. By its letter dated 27<sup>th</sup> June, 1989, the Town Clerk allocated plot No. Eldoret Municipality Block 11/16 to the Plaintiff pursuant to the minutes of the Council for the meeting held on 13<sup>th</sup> March, 1974. After the said allocation of the plot, the plaintiff immediately commenced construction of the church building. He further told the court that in 1996 they discovered that the Plaintiff had obtained titles in respect of the suit properties where the church stands, without their knowledge.
13. PW 1 produced a series of correspondence and minutes of the Eldoret Municipal Council to show that they applied for a plot and the same was subsequently allocated to the Plaintiff. There is no contention that the church has been in occupation of the said plots long before the 1<sup>st</sup> Defendant obtained titles in respect of the same. There is no evidence to show that the allocation of the plots to the Plaintiff was unlawful. The plaintiff produced a copy of the Minutes of the 333<sup>rd</sup> Meeting of the Health and Town Development Committee, Eldoret Municipal Council held on 13<sup>th</sup> March, 1974 which indicate that Plot L.R 3055/12 was allocated to the Seventh Day Adventist Church for a church building. According to PW4, Barnabas Cheruiyot, the Administration Officer at the County Government of Uasin Gishu this plot later became known as Eldoret Municipality Block 11.
14. PW1 also produced an extract of the Minutes of the 357<sup>th</sup> Meeting of the Town Planning and Works Committee held on 13<sup>th</sup> April 1987 where it was resolved that the SDA Church be allocated the plot next to their church near Uhuru Estate. Also produced by the same witness is a letter dated 16<sup>th</sup> October, 1998 by the Commissioner of Lands requesting the 1<sup>st</sup> Defendant to surrender the title in respect of Eldoret Municipality Block 11/16 to the District Land Registrar for Cancellation "as the plot belongs to and is occupied by the S.D.A Church." Presumably, the Plaintiff did not comply with the said letter.
15. Additionally, PW1 produced the map for rental houses on L.R 3055/12 which was later named as plot numbers Block 11/14, 15, 16 and 17 as plaintiff's exhibit 20. He confirmed that the plots on Block 11 were allocated by the Eldoret Municipal Council, the predecessor of Uasin Gishu County Government. He explained that after the full Council approved the allocation of the plots, the Ministry of Local Government also had to give its approval. He said he did not know how the Ministry of Lands got involved in the allocation of the plots.
16. PW1 testified that the plaintiff only applied for plot No. 16 and he produced the letter of allotment thereof as Plaintiff's exhibit P2. He said he did not have applications in respect of plots 14 and 15 though he confirmed that they were reserved for religious purposes and allocated to the plaintiff. He



also confirmed that the plots were not registered in the Plaintiff's name. He could not tell whether the plaintiff complied with the conditions in the allotment letter or developed any of the plots as he had not visited the said plots.

17. It is not in dispute that by the time the 1<sup>st</sup> Defendant obtained its Certificate of Lease the suit property had already been allocated the Plaintiff as religious plots as indicated in the map produced as Exhibit P20. Apart from the plaintiff, other churches which were allocated plots in the same area include the Salvation Army and ACK Church. The allocation and issuance of title to the 1<sup>st</sup> Defendant was therefore irregular as the plots were no longer available for allocation to the 1<sup>st</sup> Defendant.
18. As was held case of *Ali Mohammed v David Gikonyo Nambacha & Another* (Kisumu HCCA No. 9 of 2009 where it was held that;

‘Once an allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers an absolute right of ownership or proprietorship unless it is challenged by the allotting authority or it is acquired through fraud, mistake or misrepresentation, or that the allotment was outrightly illegal or it was against public interest.

In other words, where land has been allocated, it cannot be reallocated unless the first allocation is validly and lawfully cancelled. There can never be an allocation unless the land is an alienated land’

19. By the 1<sup>st</sup> defendant's own admission, the suit property was occupied by the S.D A church at the time he obtained a title thus bringing into question the manner in which the title was issued to the 1<sup>st</sup> Defendant. In a related judgment of this Honourable Court (Obaga J) in Eldoret ELC Case No. 227 of 2012 *The General of the Salvation Army (Kenya Territory) v Allan George Njogu Residence Ltd & 4 Others*, the Court cancelled the 1<sup>st</sup> Defendant's title in respect of land parcel Eldoret Municipality Block 11/14 and directed that the same should remain un-registered pending the outcome of this case. What this means is that the 1<sup>st</sup> Defendant's claim in respect of plot no. 14 has already been determined by this court and since no appeal has been preferred against the judgment of Justice Obaga, the same still stands.
20. Consequently, it is my finding that the allocation of plots Nos, Eldoret Municipality Block11/14,15 and 16 to the 1<sup>st</sup> Defendant was irregular and unlawful.
21. I will now proceed to determine whether the sale of the suit properties by Mrs. Zipporah Seroney to the 1<sup>st</sup> Defendant was lawful. The 1<sup>st</sup> defendant testified that he purchased 5 plots including the suit properties herein from one Mrs. Seroney. He produced a sale agreement dated 3<sup>rd</sup> August,1995 in respect of five plots including plots Nos Eldoret municipality Block 11/14.15 and 16 together with letters of allotment in the names of Rose Jemutai Seroney, and Christine Seroney in respect of plots numbers Eldoret Municipality Block 11/16 and 11 respectively.
22. In his testimony, Mr, Allan George Njogu Kamau Advocate told the court that he conducted due diligence and visited the suit properties. He admitted that by the time he bought the suit properties the plaintiff church had some structures on the suit property. It would appear that he did not bother to find out how the plaintiff came into possession of the suit properties. Instead, he chose to believe Mrs. Zipporah Seroney who was brandishing allotment letters that had been issued to her daughters irregularly and he ended up being duped into buying land that had already been set aside for religious purposes and allocated to the plaintiff.



23. Arising from this court's determination that the suit properties were already alienated and allocated to the plaintiff as plots set aside for religious purposes in 1987, it follows that any subsequent allocation to Rose and Christine Seroney in 1995 was irregular and unlawful. The sale of the suit properties to the 1<sup>st</sup> Defendant in 1995 was tainted with illegality as Zipporah Seroney did not pass a good title to the 1<sup>st</sup> defendant since her letters of allotment were tainted with illegality.
24. The 1<sup>st</sup> defendant has argued that he is the only one who has been issued with a Certificate of Lease. It was submitted by counsel for the 1<sup>st</sup> Defendant that in accordance with the section 26 of the [Land Registration Act](#) the Certificate of title issued by the Registrar upon registration or to a purchaser of land upon transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner thereof.
25. However as correctly submitted by leaned counsel, the said section provides that such title can be impeached if it is proved that such registration was acquired fraudulently, through misrepresentation or illegality or unprocedurally. Although he has submitted that in the instant case no iota of evidence has been adduced to show that the 1<sup>st</sup> Defendant illegally or fraudulently acquired the suit lands, the contrary is true. I say so because as I have earlier on in this judgment pointed out, the allotment letters that Zipporah Seroney relied on to transfer the suit property to the 1<sup>st</sup> Defendant was acquired unlawfully as the suit property had been allocated to the plaintiff and the plaintiff was in possession thereof. The land was already alienated and was therefore not capable of being allocated to the said Zipporah Seroney or any of her daughters.
26. Secondly in Eldoret ELC Case No. 227 of 2012 [The General of the Salvation Army \(Kenya Territory\) v Allan George Njogu Residence Ltd & 4 Others](#), the court held as follows:
- “the suit properties had been designated as special specifically reserved for public purposes and more so for religious purposes. In case of [Kipsirgoi Investments Limited v Kenya Anti-Corruption Commission](#) (2011) eKLR, the Court of Appeal dealing with the issue of land reserved for a particular purpose stated that there was uncontested material that as early as 1974, the suit property was planned as an open space and held that that the subsequent lease to the Appellant was, on the face of section 3 of the Government Lands Act, irregular. Quoting from section 3 of the [Physical Planning Act](#), Cap 286, the court concluded that reservation for a particular purpose renders that land alienated”
27. Having come to the conclusion that the 1<sup>st</sup> Defendant's titles were acquired unlawfully and unprocedurally, as the suit properties were already alienated the same must be impeached.
28. In the final analysis, it is my finding that the Plaintiff has proved its case on a balance of probabilities. Accordingly I enter judgment for the plaintiff and make the following final orders:
- a. A permanent injunction is hereby issued restraining the Defendants, their servants and/or agents from interfering with, trespassing onto, surveying, sub-dividing, alienating, selling, transferring, leasing or in any other way doing any other thing over and in respect of all those plots namely Eldoret Municipality/block 11/14,15 and 16.
  - b. The titles held by the 1<sup>st</sup> Defendant in respect of land parcels nos. Eldoret Municipality/block 11/15 and 16 are hereby cancelled.
  - c. The Land Registrar Uasin Gishu County is hereby directed to rectify the register in respect of land parcels nos. Eldoret Municipality/block 11/15 and 16 by removing the name of Allan



George Njogu Residence limited and replacing them with the name of the plaintiff or its registered trustees as appropriate.

- d. Pursuant to the judgment in Eldoret ELC Case No. 227 of 2012 *The General of the Salvation Army (Kenya Territory) v Allan George Njogu Residences Ltd & 4 Others*, the Land Registrar is hereby directed to register land parcel no. Eldoret Municipality/block 11/14 in the name of the Plaintiff.
- e. Considering the circumstances of this case, each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED THIS 9<sup>TH</sup> DAY OF MAY, 2024**

.....

**J. M. ONYANGO**

**JUDGE**

In the presence of;

Mr. Miyianda for the Plaintiff

Mr. Ngigi Mbugua for the 1<sup>st</sup> Defendant

No appearance for the 2<sup>nd</sup> Defendant

Court Assistant: Mr. Brian K.

