



**Njuguna v Gitu & 3 others (Environment & Land Case
13 of 2018) [2024] KEELC 5145 (KLR) (4 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5145 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 13 OF 2018**

EK MAKORI, J

JULY 4, 2024

BETWEEN

STANLEY NJOROGE NJUGUNA PLAINTIFF

AND

EZEKIEL WACHIRA GITU 1ST DEFENDANT

THE LAND ADJUDICATION & SETTLEMENT 2ND DEFENDANT

LAND REGISTRAR-LAMU COUNTY 3RD DEFENDANT

THE HON ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

1. This case, filed on 19th January 2018, involves a dispute over land ownership. The plaintiff, in this case, is seeking several reliefs against the defendants, which include a permanent injunction, a declaration of land ownership, and the issuance of a valid Title Deed as follows:
 - a. A permanent injunction restraining the 1st defendant by himself, his Agents, Servants, Representatives, Assigns, or any other person claiming under him from trespassing and encroaching into the Plaintiff's parcel of land known as Lamu/Lake Kenyatta II/456, laying claim of or interfering with the land in any manner.
 - b. A declaration that land parcel number Lamu/Lake Kenyatta II/456 is the plaintiff's property.
 - c. An order directing the 2nd defendant to cancel the Discharge of Charge issued in the name of the 1st defendant and issue a fresh Discharge of Charge in the plaintiff's name.
 - d. An order directing the 3rd Defendant to issue the Plaintiff a valid Title Deed in the Plaintiff's name.
 - e. Costs of the suit.



- f. Any other or further relief the Court may deem fit and just to grant.
2. The 1st Defendant filed a defence and Counterclaim, all dated 28th of August 2018; in the counterclaim, the defendant seeks the following reliefs:
 - a. A permanent injunction restraining the plaintiff by himself, his Agents, Servants, Representatives, Assigns, or any other person claiming under him from trespassing and encroaching into the 1st defendant's parcel of land known as Lamu/Lake Kenyatta II/456, laying claim of or interfering with the land in any manner.
 - b. A declaration that land parcel number Lamu/Lake Kenyatta II/456 is the property of the 1st defendant.
 - c. An order directing the 2nd defendant to issue the Discharge of Charge issued in the name of the 1st defendant.
 - d. An order directing the 3rd defendant to issue the 1st defendant with a valid Title Deed in his name.
 - e. Costs of the suit.
 - f. Any other or further relief the Court may deem fit and just to grant.
3. 2nd, 3rd and 4th defendant filed and served their statement of defense dated 5th February 2018.
4. The bone of contention in this matter is Land Parcel No. Lamu/Lake Kenyatta 11/456. The title is a product of the Settlement Fund Trustee (SFT). A discharge of Charge in the name of the 1st defendant lays at the Lamu Land and Settlement office, with both the plaintiff and the 1st defendant claiming to be the rightful owners, leading to the filing of this suit.
5. The issues then that I frame for the determination of this Court based on the materials before me will be – who was procedurally offered the suit property between the plaintiff and the 1st defendant in this matter, whether the plaintiff is entitled to the reliefs sought, whether the 1st defendant is entitled to the reliefs sought in the Counterclaim and who should bear the costs of the suit and the counterclaim.
6. In his testimony, the plaintiff said he purchased the suit land via a written sale agreement dated 7th May 2001. He bought two (2) unregistered parcels of land from Abbas Shekuna at Kshs. 60,000/=, parcel Nos. 456 and 459, measuring approximately 6.3 and 6.2 hectares, of which, at the time of sale, the said Abbas Shekuna was holding a letter of offer for parcel Number 459 in his wife's name. The plaintiff further stated that after he purchased the suit property herein Plot No. 456, Abbas Shekuna surrendered the letter of offer in respect of the same to the plaintiff, who commenced the process of applying to the 2nd defendant for the issuance of a fresh letter of offer in his name. An offer was granted to him successfully on the 26th of February 2002 by the 2nd defendant.
7. After purchasing the parcel of land, he commenced developments and put up some temporary residential structures. After that, he proceeded to Sudan, where he was deployed for a peacekeeping mission in the year 2006 and left the Parcel of land under the care of his brother Kuria Njuguna, who occupied the land but after some time, when he was taken ill, he went back to stay with his parents. The plaintiff returned to Kenya in 2007 and immediately commenced complying with the terms and conditions of the letter of offer. The plaintiff complied with the conditions of the letter of offer on the 12th of April 2011, and he made payment of a sum of Kshs.75,200/= being 10% to the SFT and also on the same day paid a sum of Kshs.4,188/= being land deposit and conveyancing fees for the suit property being Plot No.456 of Scheme 474 Lake Kenyatta II Settlement Scheme. He later found that



the 1st defendant had trespassed and encroached onto the suit property by cultivating and constructing a temporary residential structure and had demolished the temporary structures that the plaintiff had built before going for peacekeeping in Sudan and, therefore, the 1st defendant started laying ownership claim of the suit property. Due to the preceding activities by the 1st defendant, the plaintiff began to follow up on the issue with all the relevant government offices, but his efforts bore no fruit; as a result, the plaintiff opted to file this suit.

8. The 1st defendant, for his part, testified that he was legally allotted the land in question and paid all requisite monies to the SFT. A Discharge of Charge was issued in his name but has yet to be released to him, and the title in his favour due to the pendency of this suit.
9. A. H. Mohamed, the in-charge of the Lamu Land Adjudication and Settlement office, testified for and on behalf of the 2nd, 3rd, and 4th defendants and admitted that the National Land Adjudication and Settlement office and the Lamu Land Adjudication and Settlement Office caused disorganization and confusion in documenting the ownership documents of the subject land and further that there was negligence on the part of the 2nd defendant in addressing, reorganizing, rectifying and resolving the dispute over the suit property having issued two genuine and competing letters of offer which the plaintiff 1st defendants acted upon.
10. We have two competing interests on the suit property. The parcel in issue was being administered under the SFT program. The Court will delve into the root and allocation process to resolve the issue.
11. The parcel in dispute was created after the Government of Kenya declared a Settlement Scheme under the Government Act GLA was Repealed. In June 1996, the Lake Kenyatta Taskforce was assigned to register information on persons settled in the Witemere area. The suit parcel was Lamu/Lake Kenyatta 11/456 and was offered to one Abbas Shehuna, who in turn sold to the plaintiff. On 26th February 2002, through the Settlement Funds Trustees, the Ministry of Lands and Settlement presented the Plaintiff with a letter of offer. He was also offered and accepted another parcel from the Lake Kenyatta Scheme, known as Parcel Nos. Lamu/Lake Kenyatta/11/372, on 26th June 2012. A ground report was done on the suit property, and it was discovered that the 1st defendant was in occupation. The land was offered to the 1st defendant on a priority basis since he was the original settler on the ground. He proceeded to make payment to the Settlement Funds Trustees in full. This was so because the plaintiff had broken the terms of the Settlement Funds Trustees by failing to pay the requisite 10% within 30 days as required in the conditions of the offer. Subsequently, the land was regularized in favour of the 1st Defendant.
12. In the plaintiff's submissions, the Court is argued to look at the procedure the plaintiff adopted to acquire the land in question and find that the documents held by the 1st defendant were issued well after he had already fulfilled the SFT requirements.
13. Conversely, the 2nd, 3rd, and 4th defendants argue that the Court should examine the procedure adopted and find that the land was legally allotted to the 1st defendant.
14. in view of the confusion caused by the SFT, the significant issue is who should be entitled to this land. A Ground Report on 26th June 2012 showed that Abbas Shekuna had unofficially sold the land to the plaintiff. On 17th January 2005, DSCC recommended that the 1st Defendant be allocated the plot on 28/8/2007. The Land Dispute Arbitration Committee recommended that Ezekiel Gitu (the 1st defendant) be given legal ownership documents of the plot. A visit was done on 6th June 2012. The 1st defendant was found to reside on the land. It was discovered that the plaintiff owned another Plot, No. Lake Kenyatta II/372. A letter of offer was issued to 1st defendant on 4th August 2015. He made



total payments. A Discharge of Charge was issued to him on 12th February 2016. A transfer and title are what is awaiting.

15. Based on the two warring rights over who should be allotted the land, the Court will reason that it is not its role to allocate land. It is the executive. See *Angima J. in Francis Musyoki Makenzi & 61 others v Director of Land Adjudication and Settlement & 2 others; Njiru Cimba & 65 others & 26 others* [2020] eKLR:

“It has been held that where there is competition for allocation of resources which allocation falls within the competence of the executive, the judiciary should not usurp the jurisdiction of the executive and make the allocation itself. In the case of *Lucy Mirigo & 550 Others V Minister for Lands & 4 Others* [2014] eKLR, the appellants had sought orders compelling the Respondents to allocate them a portion of a government forest whose allocation had allegedly been approved by a former President of the Republic of Kenya. In dismissing the Appellants’ claim, the court held, among other things, that;

16. “In the case of *R –v- Lancashire County Council Ex p Gaver* (1980) 1 WLR 1024, it was stated that they do not usurp the role of the administrator by assuming the task of deciding how resources are to be allocated as between competing claims. We adopt the above dicta in *R –v- Lancashire County Council Ex p Gaver* (supra) and observe that it is not the duty of the courts to allocate land and decide how national resources are to be allocated between competing claims.”
17. There are two warring interests on ownership: the plaintiff and 1st Defendant. The documentation on how the land was allocated under the Settlement Funds Trustee is clear, with the initial allottee defaulting in payment instead of selling his interests unofficially to the plaintiff. The land was repossessed. It was reallocated to the 1st defendant. There is an elaborate mechanism for how the repossession and reallocation were done. The 1st defendant has all along been on the ground. He has paid all the necessary money to the Settlement Funds Trustee. He now awaits title after Discharge of Charge. On the other hand, the Plaintiff was informed he had another land in the scheme. He purchased this one. His rights are also germane because the same body, Settlement Funds Trustees, offered him the same land and allowed him to pay. He has also been waiting for a Discharge of Charge. Based on what I have, the land has already been legally allocated to the 1st Defendant. I cannot act Solomonic and split it into two. I see no fraud on the part of the 1st defendant in the acquisition of the suit land. The plaintiff’s claim is defeated. The only recourse he can have is to sue the Settlement Funds Trustees for alternative land damages and a refund.
18. The upshot is that the plaintiff’s claim is hereby dismissed, and the counterclaim succeeds as pleaded.
19. On the costs, I will reckon that the plaintiff had a genuine grievance in bringing this suit; he will not be penalized to paying costs. Each party will bear its own costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 4TH DAY OF JULY 2024.

E. K. MAKORI

JUDGE

In the Presence of;

Mr. Omwancha for the Plaintiff

Happy: Court Assistant



In the Absence of;
Mr. Obaga, for the defendant

