



REPUBLIC OF KENYA



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**Sigei v Kikwai (Environment & Land Case 33 of 2013)
[2023] KEELC 521 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 521 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 33 OF 2013
MC OUNDO, J
FEBRUARY 2, 2023**

BETWEEN

JONATHAN SIGEI PLAINTIFF

AND

JOSHUA KIKWAI DEFENDANT

JUDGMENT

1. Vide a Complaint dated May 16, 2013, the plaintiff herein sought for judgment against the defendant for allegedly trespassing on suit land known as un-surveyed plot no 15 within Kericho municipality. He also sought for the following orders;
 - i. An order of injunction.
 - ii. Damages for trespass.
 - iii. Interest thereon.
 - iv. Costs of the suit.
2. In response to the said Complaint, the defendant herein filed his statement of Defence on August 23, 2013, wherein he denied the allegations contained in the plaintiff's Complaint putting the plaintiff to strict proof of his allegations.
3. After the matter was certified for hearing on June 22, 2015 upon compliance with the provisions of order 11 of the *Civil Procedure Rules*, evidence was adduced in court on May 29, 2019 wherein the plaintiff, Jonathan Sigei testified as PW 1 to the effect that he had been allocated plot no 15 within Kericho Municipality via a letter confirming the allotment dated May 28, 2001 herein marked as PMFI 1 wherein he was required to pay kshs 25,524/=



4. The plaintiff proceeded to testify that after receiving the allotment letter, he had paid two installments consisting of kshs 10,524/= and kshs 15,000 to the county council of Kipsigis. He produced the receipts for the 2 payments as Pf exhibits 3(a) & (b).
5. That after he had made the payment, he had visited the plot in November 2012 where he had found someone had constructed there on. That he thus wrote a complaint letter to the county council wherein he had been advised accordingly and later visited the office of the commissioner of Lands to verify the location of the plot.
6. That subsequently he had filed suit against the defendant after a long period because he had been working out of the country. That he sought for an injunction against the defendant as well as for general damages for trespass and costs of this suit. He then adopted his statement as his evidence in chief.
7. On cross examination, he confirmed that he had never been in occupation of the suit property since 2001, thus the reason for his prayers for an injunction. That the plot was one of the ones that were advertised by the county council of Kipsigis. He confirmed that he had not produced the application letter he had written requesting for the plot.
8. That in the year 2001 he was based in Bujumbura and had discovered that the defendant was the one occupying his plot in 2012. He confirmed to having filed the suit after a period of almost 12 years. That he was not aware that the defendant was allocated the same plot.
9. That vide a letter dated December 22, 2008 the same gave the names of the allottees wherein the name appearing against plot no 15 was Joshua Kikwai. That he too had a letter from the county council forwarding his name to the commissioner of lands.
10. He also confirmed that in a letter dated March 3, 2012 from the county surveyor – Mr Mibey, his name did not appear on the list and that the name that appeared against plot no 15 was Joshua Kikwai.
11. He further confirmed that a letter dated October 7, 2013 from the National Land Commission was addressed to Joshua Kikwai and that it had been an application for late payment for the allotment letter. That he did not have a similar letter as he had made his payments on time.
12. That the allotment letter dated May 18, 2001 was addressed to Joshua Kiswai (defendant). He confirmed that he had not produced any rates clearance certificate and that the letter dated October 2, 2008 from the county council of Kipsigis had confirmed that the plot had been allocated to Joshua Kikwai. That the defendant had been in occupation of the plot since 2001. That at the time he had been allotted the house, it was vacant and although he had been paying land rates for it, yet he had not produced any documents to that effect.
13. In re-examination, the plaintiff reiterated that he had taken long to occupy the plot as there was someone else in occupation. That he had been issued with an allotment letter on August 28, 2001 and had made payments on May 4, 2001(sic). That whereas the defendant's allotment letter was dated October 2, 2008, his allotment letter was dated October 2, 2001. That a letter dated March 3, 2012 had also indicated that the defendant had been allocated the plot. He confirmed that he did not pay the rates because his case was in court.

The plaintiff thus closed its case

14. The defence did not prosecute the matter despite several adjournments wherein on the date scheduled for hearing there was no attendance and the case was marked as closed.

The plaintiff subsequently filed their submissions to which I shall summarize as follows;



15. On May 18, 2001, the plaintiff was allocated un-surveyed plot no 15 situated in Kericho municipality within Kericho county, a plot that initially belonged to Kipsigis county council. Consequently the plaintiff paid a total of kshs.25,524/= a condition precedent to the allocation wherein he was shown the plot which had a council employee's house standing thereon.
16. The county council requested the plaintiff to allow the council employee to continue staying on the plot as a tenant-at-will while an alternative accommodation was being sought. When the council employee vacated sometimes in 2007, the defendant without any colour or right decided to take possession of the plot and illegally occupied the building standing thereon.
17. The plaintiff treats the defendant as a trespasser on the property and claims damages for the wrongful entry therein as well as for a permanent injunction restraining the defendant, his servants, workmen and agents, from entering onto his property, or from in anyway whatsoever Interfering with his use and enjoyment of the said property.
18. That during the hearing the plaintiff had produced
 - i. Copy of allocation letter dated August 28, 2001 marked for identification no 1
 - ii. Copy of letter of allotment dated May 18, 2001 as exhibit no 2
 - iii. Copy of receipts of two payments, kshs 10,524/= and kshs 15,000/= both dated May 4, 2001 being money paid to county council for Kipsigis for the plot no 15 as exhibits no 3(a) and 3(b).
19. It was their submissions that the plaintiff had proved his case on the balance of probabilities and the scale of justice ought to tilt in his favour. That there was a good basis for an order for damages from the year 2007, for the wrongful entry by the defendant on to the plaintiff's land known as un-surveyed plot no 15 within Kericho municipality and for a permanent injunction restraining the defendant, his servants, workmen and agents, from entering on the plaintiff's said property. That judgment be entered as prayed.

Determination.

20. I have considered the matter before me, the evidence as well as the submission, and the applicable law herein. I have further considered that this was an undefended suit and therefore I shall proceed to determine the same on its merits.
21. It is not disputed that the suit land herein being plot no 15 within Kericho municipality had been allocated to the plaintiff via an allocation letter dated May 18, 2001 wherein he had proceeded to pay the required kshs 25,524/= in two instalments.
22. It is further uncontroverted, that pursuant to paying the said sums of money, the plaintiff did not take immediate possession of the property but that sometime in November 2012 when he visited the property, he had found the Defendant had constructed there on and was now in occupation/possession.
23. Subsequently the plaintiff filed the present suit after a long period, because according to him, he had been working out of the country. In this suit, he sought for orders of an injunction against the defendant as well as for general damages for trespass and costs of this suit.
24. The issue that arises for determination herein are as follows;
 - i. Whether the letter of allotment conferred proprietorship to the plaintiff.
 - ii. Whether the plaintiff had sufficiently discharged his case



25. Section 26 (1) of the [Land Registration Act](#) provides:-

- (1) The certificate of title issued by the registrar upon registration or to a purchaser of land upon a 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-
 - a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

26. The registration of titles to a piece of land emphasizes on the accuracy of the land register so as to mirror all registerable interests that affect a particular parcel of land. The government, as the keeper of the master record of all land and their owners guarantees indefeasibility of all rights and interests shown in the land register against the entire world and in case of loss arising from an error in registration only the person affected is guaranteed of government compensation.

27. An allotment letter as has been held by the courts time and again, do not confer ownership to land, but is just a letter of offer. Indeed a person holding an allotment letter has to proof that they have met the conditions stipulated therein to wit, paying the stand premium, rent, conveyancing fees, registration fees, stamp duty, survey fees, approval and planning fees as stated in the letter. Indeed it could therefore not be said that the Plaintiff herein had proprietary interest to the plot of land merely because he had in his possession a letter of allotment.

28. In the case of [Philma Farm Produce & Supplies & 4 others vs The Attorney General & 6 others](#) (2012) eKLR, the court held as follows:

“The petitioners’ claim is grounded on two letters of allocation of the suit properties. These letters do not confer a proprietary right but only a right to receive property or to be allocated on complying with the terms and conditions stated therein. The right to be allocated the property is a contractual right and must be determined in accordance with the ordinary rules of contract. It is in this respect that the petitioner claim must fail...”

29. Further in [Marcus Mutua Muluvi & Another vs Philip Tonui & Another](#) [2012] eKLR the court had also held as follows:

“The applicants have no title to the suit premises. That being the case, I do not see the proprietary interest of their suit premises that have been infringed by the respondent, their claim to the suit premises being anchored on letters of allotment.”

30. Lastly, in [Ali Mohamed Dagane \(Granted Power of Attorney by Abdullahi Mubumed Dagane, suing on behalf of the Estate of Mohamed Haji Dagane\) v Hakar Absbir & 3 others](#) [2021] eKLR the court had held that:

“Having evaluated in detail the necessary steps to be followed, it is emergent that a litigant basing their interest in land on the foundation of an allotment letter must provide the following proof: first, the allotment letter from the commissioner of lands; secondly, and



attached to the allotment letter, a part development plan; thirdly, proof that they complied with the conditions set out in the allotment letter, primarily that the stand premium and ground rent were paid, within the specified timeline. It would also help a litigant's case, although this may not be mandatory based on the stage of the transaction, to have a certified beacon certificate.”

31. In the instance case, apart from being in possession of the letter of allotment, the plaintiff had not provided any evidence that he had complied with the conditions set therein and therefor upon lapse of the offer contained in the allotment letter, the land was free to be allotted to someone else. It appears that this is what happened because during the cross examination, the plaintiff had confirmed that vide a letter from the county council dated December 22, 2008 the same gave the names of the defendant as an allottee to plot no 15. That in a letter dated March 3, 2012 from the county surveyor Mr Mibey, his name did not appear on the list but instead the defendant's name had appeared against plot no 15. He had further confirmed that a letter dated October 7, 2013 from the National Land Commission was addressed to the defendant and was in regard to an application for late payment for the allotment letter.
32. The plaintiff also confirmed that he had not produced any rates clearance certificate and that vide a letter dated October 2, 2008 from the county council of Kipsigis, the plot had been allocated to Joshua Kikwai the defendant.
33. In Joseph Arap Ng'ok vs Justice Moijo Ole Keiwua NAI Civil Application no 60 of 1997 the Court of Appeal observed as follows:

‘It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document (my emphasis) pursuant to provisions in the Act under which the property is held.’
34. The plaintiff having confirmed that he had not met the conditions stipulated in the letter of allotment and there having been no title deed issued, I find that his case lacks merit and the same is herein dismissed with costs at a lower scale since the case was undefended.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 2ND DAY OF FEBRUARY 2023.

M C OUNDO

ENVIRONMENT & LAND – JUDGE

