



Kisengeroni (Suing as the Representatives of Morendat Laramatak Self Help Group) v Academy & 2 others (Environment & Land Case 50 of 2014) [2023] KEELC 16014 (KLR) (9 March 2023) (Judgment)

Neutral citation: [2023] KEELC 16014 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 50 OF 2014**

A OMBWAYO, J

MARCH 9, 2023

BETWEEN

PELELA OLE KISENGERONI (SUING AS THE REPRESENTATIVES OF MORENDAT LARAMATAK SELF HELP GROUP) PLAINTIFF

AND

GILGIL HILLS ACADEMY 1ST DEFENDANT

CHIEF OF KAMPI SOMALI, GILGIL TOWN 2ND DEFENDANT

THE HON. ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. Pelela Ole Kisengeroni (suing as representative of Morendat Laramatak Self-help group (herein after referred to as plaintiff) has come to this court against Gilgil Hills Academy Limited, Gabriel Kamau Chief of Kampi ya Somali in Gilgil town and the Attorney General (hereinafter referred to as defendants) claiming that at all material times to this suit, the plaintiff is the bonafide registered proprietor of the parcel of land known as “cattle Holding Ground” hereafter referred to as the “suit Property”, and has enjoyed quiet and peaceful possession of the same since 2001.
2. It is averred by the plaintiff that on or about the 12th of February, 2014 the agents and/or servants of Gilgil Hills Academy, the first Defendant herein, came to the suit property in the 1st Defendant school bus accompanied by the second defendant herein and trespassed into the plaintiff’s parcel of land without any colour or right demolishing the fence, and burning down the plaintiffs house on the suit property. That the plaintiff reported about the trespass of their suit properties and consequent demolition of its house to the officer in charge at Gilgil Police Station vide OB No.45/12/2014. The plaintiff has been trying to obtain a title deed for a long time but its efforts have been in vain.



3. It is alleged that in late January 2014, the plaintiff found out from Ardhi House that their parcel of land has been allegedly allotted to a school known as Gilgil Hills Girls Academy, a school which is not in existence and if any does then the same has no physical bearing. The plaintiff avers that there exists no such school as far as the Ministry of Education is concerned. The plaintiff further avers that there is also another allotment to Gilgil Hills Academy over the same plot A and B which constitutes their suit property as well.
4. It is pleaded that at all material times to this suit, the plaintiff has been duly paying all the rates as they became due from 2001 to date.
5. That since then, the defendant has denied the plaintiff quiet and peaceful possession of their parcel of land, the suit properties herein.
6. The plaintiff prays for a declaration that the plaintiff is the legal owner of the suit property. Moreover, she prays for a temporary injunction pending the hearing of the suit. Furthermore, she prays for a permanent injunction restraining the defendants by themselves, their employees, agents and any other person working under their authority from wasting, damaging, alienating, selling, removing or disposing of any of the suit property or in any way interfering with the quiet and peaceful possession of the suit properties by the plaintiff. Last but not least, he prays for General damages, costs of the suit and interest at court rates from the day of filing the suit.
7. The 1st defendant filed defence denying plaintiffs allegations and stating that it is the plaintiffs who have trespassed on the suit property. The 1st defendant avers that the plaintiff's agent encroached onto the defendant's property and brought down a fence and started dividing the property into portions.
8. In the counter-claim the defendant states that she applied for the parcel of land to the commissioner of lands and was offered the land by letter dated 16th December 2012 subject to payment of Ksh.212,800 on the 10th March 2003, the plaintiff, paid the sum of Ksh.212,800. The plaintiff has surveyed and the Registry Index Map amended. The defendant had peaceful occupation until 2014 when the plaintiffs trespassed. The 1st defendants avers that the alleged allocation of the land to the plaintiff was a nullity as it had not been registered. The alleged allocation was on 11th December 2001 whereas the plaintiff was registered as a self-help group was registered on 27th September 2002.
9. The 1st defendant prays that a declaration be issued that the 1st defendant is the lawful owner of the suit property L.R Gilgil Township Block 3/672. That an order of eviction be issued to remove any member of Morendant Self Help Group and any other unauthorized person(s) from L.R Gilgil Township Block 3/672. That a permanent injunction be issued to restrain the plaintiff and its members and any unauthorized persons from trespassing entering, into or to otherwise interfering with the 1st defendants ownership rights in and quiet possession of L.R Gilgil Township Block,3/672. The costs of this suit be borne by the plainiff.
10. The plaintiff's suit was dismissed for non-attendance. The 1st defendant called DW1, Loice Wairimu Waithaka, the director who relied on her witness statement recorded on 22nd July 2014. According to the director, the school was allocated the land in dispute and the plaintiffs invaded the same and subdivided the same amongst themselves.
11. DW2 Robert Simuyu the assistant Director of Land Administration in the Ministry of Lands based at its headquarters testified on oath that the land in dispute is Gilgil Township Block 3/672 file number 244769. The same belongs to Gilgil Hills Academy.
12. I have considered the evidence on record and submissions by the 1st defendants counsel and do find that legal process that leads allocation and ownership of Government land before the advent of the



- Constitution of Kenya 2010 has been explained by this court time and again. The initial process was to approach the municipal council in which the land to be disposed was situate who had the mandate of advising the Commissioner of Lands on which portions of land could be disposed.
13. The council was required to visit the area or to carry out a fact-finding mission to satisfy itself that the land was first of all government land and second that it was indeed available for disposition.
 14. In Harison Mwangi Nyota v Naivasha Municipal Council & 20 others [2019] eKLR the court held:-

“...The question that the plaintiff seemed to raise is what role the Municipal Council of Naivasha had in the issuance of allotment letters to the defendants in 1992. According to DW1, an employee of the 1st defendant, the local authority (1st defendant) has to recommend that the land is available for allocation before an allotment letter can issue. DW13 also told the court that the Council oversees all developments in its jurisdiction and allocates land on advisory basis for the Commissioner. It seems that even if the 1st defendant issued the letters dated 1/12/1992, it was mere advisory to the Commissioner of Lands. The allotment of the land had to be ratified by the Commissioner for Lands. It is obvious even from the communication between the Municipal Council and the Office of the Commissioner of Lands that the Council played an important role in identifying what land was available for purposes of alienation.”
 15. The second step would be for the part development plan to be drawn up and approved by the Commissioner of Lands.
 16. In Nelson Kazungu Chai & 9 Others v Pwani University College (2014) eKLR, it was held:-

“It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister of Lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved Part Development Plan is then issued to the allottee.”
 17. The third step involved the determination of certain matters by the Commissioner of lands which matters are listed under Section 11 of the Government Lands Act (Repealed).
 18. The matters to be determined include the upset price at which the lease of the plot would be sold, the conditions to be inserted into the lease; the determination of any attaching special covenants and the period into which the term is to be divided and the annual rent payable in respect of each period.
 19. The fourth step would be for the gazette of the plots to be sold, at least four weeks prior to the sale of the plots by auction under Section 13 of the Government Lands Act (Repealed). The notice was required to indicate the number of plots situate in an area; the upset price in respect of every plot; the term of the lease and rent payable, building conditions and any attaching special covenants.
 20. The fifth step would be for the sale of the plots by public auction to the highest bidder. Section 15 of the Government Lands Act (Repealed).
 21. The sixth step would be for the issuance of an allotment letter to the allottee. An allotment letter has been held not to be capable of conferring an interest in land, being nothing more than an offer, awaiting the fulfilment of the conditions stipulated therein by the offeree.



22. In *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* 182/1992 (Nyeri); and in *Dr. Joseph N.K. Arap Ng'ok v Justice Moiyo Ole Keiyua & 4 others* C.A.60/1997 the Court of Appeal held as follows:
- “It has been held severally that a letter of allotment per se is nothing but invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer interest in land at all. It cannot thus be used to defeat a title of a person who is the registered proprietor of the said parcel of land.”
23. In order for an allotment letter to become operative, the allottee was required to comply with the conditions set out therein including the payment of stand premium and ground rent within the prescribed period.
24. In *Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands & 2 others* [2014] eKLR the court held:-
- “I have considered the evidence on record and the submission of the parties and do find that a letter of allotment was issued to Mr. Joseph K. Mugambi on 21/10/1971 with a condition to accept the offer within 30 days. He did not do so and thereafter the offer lapsed 30 days after it was made in accordance with the allotment letter. Having failed to accept the offer as stipulated in the letter of allotment Mr. J.K. Mugambi did not acquire interest in the unsurveyed lorry depot and therefore had no interest to transfer to the plaintiff. This court holds that a letter of allotment does not confer any property rights to a person unless there is acceptance and payment of the stand premium and ground rent. In the letter dated 17/6/1988 which was written about 17 years after the allotment letter was issued, the Commissioner of Lands confirmed that the plot was allocated to Joseph M. Mugambi in 1971 for lorry depot. However, the plot had neither been paid for nor an acceptance of the offer in the allotment letter made. The implication of this letter was that the allottee had not complied with the terms of the allotment letter and therefore the offer had lapsed. The offer having lapsed, the allottee Mr. Joseph M. Mugambi did not have any interest to transfer to the plaintiff and therefore all transactions between the allottee and the plaintiff were a nullity in law.”
25. The allotment letter also must have attached to it a part development plan (PDP). In *African Line Transport Co. Ltd v The Hon .AG*, Mombasa HCCC No.276 of 2013 Njagi J as he then was held as follows:
- “...Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number.”
26. And again, in *Nelson Kazungu Chai & 9 Others v Pwani University College* (2014) eKLR, it was held:-
- “Worth noting as well is that no Part Development Plan was produced to back the Appellants’ claim that due process had been followed as alleged.”
27. The seventh step, which comes after the allottee has complied with the conditions set out in the allotment letter is the cadastral survey, its authentication and approval by the Director of Surveys and the issuance of a beacon certificate. The survey process precipitates the issuance of land reference numbers and finally the issuance of a certificate of lease.



28. In *Nelson Kazungu Chai & 9 Others v Pwani University College* (2014) eKLR the court held as follows:

‘It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a Certificate of Lease. This procedural survey was confirmed by the Surveyor, PW3. The process was also reinstated in the case of *African Line Transport Co. Ltd v The Hon .AG, Mombasa HCCC No.276 of 2013* where Njagi J held as follows:

“Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot.”

29. The 1st defendant counter claimant is basing her claim on the force of the allotment letter dated 16th December 2002 from the Commissioner of Lands; Secondly, he has attached to the allotment letter, a part development plan dated 30th June 1999; Thirdly, there is evidence that the stand premium and ground rent were paid, within the specified timeline.

30. The commissioner of lands confirmed that the 1st defendant paid the land Rent and was issued with Rent Clearance Certificates. I do find that the 1st defendant counter- claimant has proved his case on a balance of probabilities and therefore do grant a declaration that the 1st defendant is the lawful owner of the suit property L.R Gilgil Township Block 3/672. That the plaintiffs to vacate the property within 120 days from the date of service of the decree, failure of which, an order of eviction be and is hereby issued, to remove any member of Morendant Self Help Group and any other unauthorized person(s) from L.R Gilgil Township Block 3/672. The costs of this suit be borne by the plaintiff.

31. Orders accordingly.

JUDGMENT, DATED SIGNED AND DELIVERED VIA EMAIL AT NAKURU THIS 9TH DAY OF MARCH 2023.

A O OMBWAYO

JUDGE

