



**Kinyanjui & 97 others v Trustees (Environment & Land Case  
263 of 2012) [2023] KEELC 15966 (KLR) (1 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 15966 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 263 OF 2012**

**JM MUTUNGI, J**

**MARCH 1, 2023**

**BETWEEN**

**JAMES MUNGAI KINYANJUI & 97 OTHERS ..... PLAINTIFF**

**AND**

**SETTLEMENTS FUND TRUSTEES ..... DEFENDANT**

**RULING**

1. The plaintiffs instituted the present suit vide a plaint dated June 24, 2010 that was subsequently amended and further amended. By the further Amended plaint dated November 7, 2012, the plaintiff claimed that between the years 2005 – 2008, they were allocated various plots within Oljorai Phase II Settlement Scheme at Naivasha and asserted that while some of them were issued with allotment letters, others were for un-explained reasons not issued allotment letters. The plaintiffs however stated the defendants in 2009/2010 unlawfully and irregularly prepared a fresh list of allottees and issued letters of allotment to third parties and demanded that the plaintiffs vacate from the parcels of land that they had been allocated and/or taken occupation and possession of. The plaintiffs thus filed the instant suit seeking orders of restraint against the defendants and orders that the defendants be directed to issue the plaintiffs with letters of allotment, receive payments for the same and process title documents in favour of the plaintiffs.
2. The defendants filed a statement of defence denying the plaintiffs allegations contained in the plaint and invited the plaintiffs to offer proof.
3. Hearing of the suit opened before Munyao J. on May 29, 2019 when PW1 Samson Muchiri Nduati the 6<sup>th</sup> plaintiff testified in chief but was not cross-examined as he did not have the original documents whose copies were exhibited in the bundle of documents filed in court. The witness was stood down and when the matter was rescheduled for hearing on 5/10/2021, the parties agreed by consent to have the dispute referred for determination through Alternative Dispute Resolution Mechanism (ADR)



under the Chairmanship of the Nakuru County Commissioner. The order of Reference was in the following terms:-

1. That this case be and is hereby referred for ADR under the Chairmanship of the County Commissioner, Nakuru County who will require the office of the Settlement and Land Adjudication to avail the original allocation lists either issued through the Nakuru office or the Naivasha office to be produced for verification and if need be, a site visit may be made by then.
  2. That the plaintiff will nominate two persons to represent them during the ADR process.
  3. That the County Commissioner will cause a report to be prepared and filed in Court within the next 120 days from today, 5/10/2021.
  4. That this order to be extracted and served on the County Commissioner for necessary action.
  5. That this ADR relates to Oljorai Settlement Scheme and the report filed should include a list of allottees and should clarify whether any of the plaintiffs were in such list.
  6. That matter to be mentioned on 21/2/2022 for further directions.
4. On 21/2/2022, the County Commissioner had not filed his report but the parties confirmed that various meetings had been held. The period for the County Commissioner to file the report was extended by a further 30 days and the same was duly filed on February 25, 2022. The report was furnished to the parties for their Review and reaction. On July 27, 2022 when the matter came up for mention for further directions, Mr. Kipkoech advocate for the plaintiffs indicated that though the plaintiffs agreed with the report factually, they did not agree with the recommendations in the report. The court in the premises directed the parties to make written submissions on the report for consideration, by the court before rendering its ruling.
5. The plaintiffs filed submissions on 31/8/2022 and the defendants filed theirs on 5/10/2022. The plaintiffs highlighted the facts of the case which are largely not in dispute. The plaintiffs further made reference to various court decisions where the courts have had to consider competing interest in regard to allocations. The plaintiffs cited the cases of *Kibwonges Arali Kogo Vs Mary Njeri Gitiga* (2021) eKLR where the Court held once land is allocated, it could not be re-allocated unless the first allocation was validly and lawfully cancelled. In the case of *Ali Gadaffi & another vs Francis Mubia Muthungu & 2 others* (2017) eKLR, the court equally held where an allotment is made and the terms are met, the same land would be unavailable for re-allotment to another person.
6. The plaintiffs argued that having been allocated the subject plots and having accepted the allotments and made payment, the plots were un-available to the Settlement Fund Trustees. The plaintiffs contended that the lists of allottees furnished as annexures to the report were manipulated as there was no evidence of how the allocations were made. The plaintiffs further submitted the recommendations made in the report, failed to take consideration that the plaintiffs who got allocated land and paid the allotment fee were in need of land and the recommendations that they be refunded the money they had paid is unreasonable since such money cannot buy land anywhere in Kenya today. The plaintiffs also averred the report failed to take consideration of the fact that some of the plaintiffs have been on their plots from as far back as 1993 and are now being dispossessed their land.
7. The defendants in their submissions urged the court to adopt the recommendations of the County Commissioner. The defendants argued that the allotment letters issued to the plaintiffs were validly cancelled and a verification exercise was carried out as outlined in the report. They argued that before the allocations were made, the plaintiffs did not present themselves during the verification process by the government and never pointed out their alleged parcels of land to the Settlement Officer



and Adjudication officer who together with the Local Committee were carrying out the verification exercise.

8. The defendants submitted that following the cancellation of the plaintiffs and all the allotment letters issued between 2005 – 2008, a physical verification of allottees was carried out and all persons who were on the ground were allocated land where they had occupied and/or settled and therefore if the plaintiffs had been allocated any land on which they had settled, they would have been included in the new re-allocation list. The defendant placed reliance on the cases of *Mary Njeri vs Teket Ole Munitet & another* (2018) eKLR; *Paul Ndirangu Kibugua & 149 others Vrs Ministry of Lands & 85 others* (2021) eKLR; and *Kamau Mbogo Vrs Settlement Fund Trustees* (2019) eKLR in support of the proposition that provided due process was adhered to, the Settlement Fund Trustees could properly and validly cancel an allotment and in such event could re-allocate the land to another person.
9. I have considered the rival submissions of the parties and have read and reviewed the Report and the annexures thereto. The issue for determination is whether the parties having opted to have the dispute resolved through the process of Alternative Disputes Resolution (ADR), the Report and recommendations emanating from the ADR process should be adopted and implemented as a Judgment/decree of the court.
10. Alternative Disputes Resolution mechanism, presently gaining currency as Alternative Justice System (AJS) is properly anchored in our law. The *Constitution of Kenya* 2010 under article 159(2) outlines the principles that should guide the Courts in the exercise of judicial authority. Article 159(2) of the *Constitution* provides as follows:-
  - (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles:-
    - (a) Justice shall be done to all, irrespective of status;
    - (b) justice shall not be delayed;
    - (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to Clause (3);
    - (d) Justice shall be administered without undue regard to procedural technicalities; and
    - (e) The purpose and principles of this Constitution shall be protected and promoted.
11. Article 159(2)(c) of the *Constitution* set out above clearly enjoins the Courts to promote ADR and hence parties choose to embrace ADR. The process is not subordinated to the Court system but rather is a complementary form of resolving a dispute independent of the Court process. The Environment and Land Court Act, 2011 under Section 20 provides for ADR as a form of resolving disputes. Section 20 of the Act provides as follows:-
  20. Alternative dispute resolution
    - (I) Nothing in this Act may be construed as precluding the Court from adopting implementing on its own motion, with the agreement of or at the request of the parties any other appropriate means of alternative dispute resolution including conciliation, mediation and traditional dispute resolution mechanisms in accordance with article 159 (2)(c) of the *Constitution*.



12. Order 46 of the [Civil Procedure Rules](#) provides for Arbitration under order of the court and other alternative dispute Resolution mechanisms. Order 46 rule 20 provides as follows: \_

20.

- (1) Nothing under this order may be construed as precluding the Court from adopting and implementing of its own motion or at the request of the parties, any other appropriate means of dispute resolution (including mediation) for the attainment of the overriding objective envisaged under section 1A and 1B of the Act.
- (2) The court may adopt an alternative dispute Resolution and shall make such orders or issue such directions as may be necessary to facilitate such means of dispute resolution.
- (3) Where a court mandated mediation adopted pursuant to this Rule fails, the court shall forthwith set out the matter down for hearing and determination in accordance with the Rules.

13. I have made reference to the above legal provisions to illustrate that ADR is anchored and provided for under our laws. In my view, once parties elect to have their dispute adjudicated under the alternative dispute resolution mechanism, the Court is divested of jurisdiction to deal with the same matter save by way of an application challenging the conduct of the process. In my opinion, an award emanating from a reference to ADR may be challenged only on the same grounds an arbitration award may be challenged as provided under order 46 rules (15) and (16) of the [Civil Procedure Rules](#). The Court under Order 46 Rule 15 can remit the award for reconsideration where the award has left some matter undetermined that ought to have been determined; or the award is so indefinite as to be incapable of taking effect; and, or if the legality of the award is apparent on the face of it. The award under order 46 rule 16 may be set aside for corruption or misconduct of the umpire; and/or if a party has fraudulently concealed any matter he ought to have disclosed or has willfully misled or deceived the umpire.

14. Having reviewed the Report and recommendations made by the County Commissioner, Nakuru County, I am satisfied that the composition of the participants during the ADR process was in compliance with the terms of reference made by the Court. All the parties interested including the plaintiffs were represented. The Report outlines the historical background relating to the allocation of land in Oljorai Phase 1 and II which is the subject of the dispute. The Report summarizes the events and process that led to nullification and cancellation of the letters of allotment issued by the ADC, Department of Land Adjudication and Settlement and the Provincial Administration prior to 2009. Apparently after a series of barazas and consultative meetings with stakeholders and settlers within the scheme seeking to resolve the disputes relating to allotment of plots in the scheme, a delegates meeting was held on 8<sup>th</sup> October 2009 at Naivasha. The following resolutions inter alia were reached and adopted unanimously: \_

- a. The Nullification and cancellation of all previous allocation letters issued by ADC, Department of Land Adjudication and Settlement and from Provincial Administration since they were a source of conflict among the settlers.
- b. A fresh ground verification of genuine settlers to be undertaken starting with phase II since it had less complications.
- c. Each of the villages to elect village committees comprising people of integrity and respect gender balance. These committees were mandated to assist surveyors and recorders identify genuine residents of the scheme. The committees were also required to sign the settlers register



at the end of every working day. The final list of those short listed on the ground was to be displayed at the District Officer's office for confirmation of the names by the beneficiaries.

- d. The first ADC map to be used as a guide in the verification exercise while new maps were to be drawn after the ground work was complete.
  - e. Settlers were to be allocated land where they were settled and developed without any unnecessary displacement.
15. The resolutions were communicated to the affected settlers at a public baraza held at Kongasis Market on October 28, 2010 after the verification exercise had been carried out. As per the Report, the verification exercise was done by Village Committee members who visited each plot with a view of identifying and registering the person in occupation and/or who had settled and developed the plot. The Village Committee members were elected by the villagers in a public baraza and were local persons who knew the occupants of the plots. The Report further indicates after the verification exercise was completed, a fresh allocation list was compiled and was forwarded to the Director of Land and Adjudication for issuance of letters of offer to the successful allottees.
16. The ADR team according to the Report visited all the disputed plots and the findings were that the plots claimed by the plaintiffs were occupied and developed by persons who were allocated the same after the verification exercises and that the majority of them held titles to their parcels of land. The ADR team therefore could not uphold the plaintiff's claims and hence the recommendations.
17. After reviewing and considering the Report and the recommendations thereto, it is my finding and holding that the ADR was conducted in conformity with the order of reference made by the court on October 5, 2021. On the basis of the Report and the annexures thereto, the court is satisfied that there was justification to hold that the allotments made to the plaintiffs were properly nullified and cancelled after due process. The ADR team and the umpire did not misconduct themselves in any manner to warrant the court to impugn the Report submitted by the County Commissioner, Naivasha as the nominated chair/umpire of the ADR Team.
18. The court in the premises adopts the Report and the recommendations for implementation and consequently enters judgment in terms of the Report and Recommendations and flowing therefrom makes the following final orders:-
1. The plaintiffs holding the cancelled letters of offer issued between 2005 and 2008, and had paid any money for the plot offer and were issued official receipts should be refunded the money they paid upon production of the receipts by the Director of Land Adjudication and Settlement forthwith.
  2. The affected plaintiffs' names and their particulars to be furnished to the Office of the Deputy County Commissioner, Gilgil (being the Chair to Sub-County Plot Selection Committee) to be prioritized for consideration for allocation of plots in any available Government Schemes established or declared by the Director, Land Adjudication and Settlement.
  3. The Director, Land Adjudication and Settlement to be furnished a copy of the ADR Report and this Ruling together with the plaintiffs list as under (2) above for him to consider and give priority to the affected plaintiffs in case land is identified for settlement anywhere within Nakuru County or the Republic of Kenya.
  4. Each party to bear their own costs of the suit.

**RULING, DATED, SIGNED AND DELIVERED THIS 1<sup>ST</sup> DAY OF MARCH, 2023.**



**J.M. MUTUNGI**  
**ELC JUDGE**

