



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MAKUENI**

**ELC SUIT NO. 304. OF 2017**

**JOYCE KILONZO.....PLAINTIFF**

**VERSUS**

**HONOURABLE ATTORNEY GENERAL.....1<sup>ST</sup> DEFENDANT**

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

**MAKUENI COUNTY GOVERNMENT.....3<sup>RD</sup> DEFENDANT**

**RHODA MUTHEU.....4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff moved this court vide a Plaint dated 4<sup>th</sup> July, 2017, seeking the following prayers from the Court: -

**a. The Defendants either by themselves, their agents, servants or in any manner howsoever be restrained from advertising, leasing, selling, dealing with, conveying, subdividing the land parcel described and known as MAKUENI PLOT NO. MAKUENI UNS.B.C.R. PLOT 63 WOTE TOWN in the allotment letter dated 3<sup>rd</sup> April,1997 ('the Plot') and /or interfering with the Plaintiff's legal, contractual, equitable interests and /or rights of quiet ownership, possession, occupation and enjoyment thereof.**

**b. Order directing the forthwith issuance of title deed of the land parcel described and known as MAKUENI PLOT NO. MAKUENI UNS.B.C.R.PLOT 63 WOTE TOWN in the allotment letter dated 3<sup>rd</sup> April, 1997 ('the Plot') to the Plaintiff upon revocation of any other certificate of lease, title deed and /or any proprietorship documents which may have been issued to any other party other than Plaintiff and rectification of the Land Register and records to reflect the Plaintiff as the proprietor of the Plot and the Defendants to avail and execute all documents necessary for the transfer lieu thereof the Deputy Registrar of the Court to execute the Transfer documents in favour of the Plaintiff.**

**c. Costs of and incidental to the suit and interest at court rates.**

**d. Any other remedy as the Honourable court may deem fit and applicable in the circumstances.**

2. In the Plaint, the Plaintiff averred that on or about 3<sup>rd</sup> April, 1997, the County Government of Makueni allocated her a parcel of land known as MAKUENI PLOT NO. MAKUENI UNS.B.C.R PLOT 63 WOTE TOWN. She went to aver that she made payments and fulfilled all requirements and has been waiting for issuance of proprietorship and ownership document.

3. The Plaintiff further averred that the Defendants have jointly and /or severally wrongfully, illegally, unlawfully, unprocedurally and /or fraudulently conveyed, encroached on, trespassed on, attempted to carry out development, evict, defeat and extinguish her proprietorship interest on the Plot.

4. The Plaintiff also averred that the Defendants may have issued a letter of allotment to third parties and the 4<sup>th</sup> Defendant contrary to the Plaintiff's interest and in breach of her fundamental human rights and legitimate expectation to be the sole proprietor of the plot to use, enjoy and develop. The Plaintiff further averred that any contrary allocations by the Defendant or their predecessor to the 4<sup>th</sup> Defendant is null and void. Finally, the Plaintiff averred that she had suffered loss and damage and claimed mesne profits.

5. The 1<sup>st</sup> Defendant filed its Statement of Defence dated 25<sup>th</sup> August, 2017. The 1<sup>st</sup> Defendant denied paragraphs 6,7,8,9 and 10,11,12,15 and 17 of the Plaintiff and put the Plaintiff to strict proof thereof. The 1<sup>st</sup> Defendant also averred that the allocations were legal, lawful, regular, statutory, equitable and constitutional.
6. The 2<sup>nd</sup> Defendant filed its Statement of Defence dated 26<sup>th</sup> January, 2018 in which it denied paragraph 6,7,8,9,10,11,12,15 and 16 of the Plaintiff and put the Plaintiff to strict proof thereof. The 2<sup>nd</sup> Defendant averred that the Plaintiff had never fulfilled any requirements or made payments in relation to Uns.B.C.R Plot No. 63 Wote Town. The 2<sup>nd</sup> Defendant also stated that it has never received any notice of intention to sue.
7. The 4<sup>th</sup> Defendant filed her Statement of Defence dated 7<sup>th</sup> May, 2018 in which she averred that on 3<sup>rd</sup> June, 2015, the suit plot was confirmed to be registered in her name and was invoiced to run a business in the sum of Kshs. 8,300/-.
8. The 4<sup>th</sup> Defendant averred that she conducted a search and found Plot Number 63 to be in the name of Makueni County Government and that the same plot was allocated to her on 10<sup>th</sup> June, 1997. She further averred that she was not aware that the same Plot was allotted to the Plaintiff on 3<sup>rd</sup> April, 1997. The 4<sup>th</sup> Defendant averred that the Plaintiff should not associate her with the fraud because the 3<sup>rd</sup> Defendant, confirmed her as the registered proprietor on 3<sup>rd</sup> June, 2015.
9. She further averred that if the Plaintiff had paid for the Plot and accepted the offer, then she should pursue the matter with the Commissioner for Lands who was acting as an agent of the then Makueni Local Government. The 4<sup>th</sup> Defendant denied paragraph 6,7,8,9,10 and 11 of the Plaintiff and termed them as baseless.
10. The Hearing of this suit proceeded on 7<sup>th</sup> May, 2018 when the Plaintiff, Joyce Kilonzo, presented her case before the court. She told the court that she was issued with an allotment letter on 4<sup>th</sup> April, 1997 and paid the necessary fees on 27<sup>th</sup> May, 1997. That the plots were advertised in the Daily Nation Newspapers and applicants were invited to apply for the allotment of the plots. The Plaintiff also told the court that her allotment was never revoked before being allocated to the 4<sup>th</sup> Defendant. That at first, she tried to pay for the rates but would be informed that the Plots file was missing. Eventually, she was notified that the Plot belongs to the 4<sup>th</sup> Defendant. The Plaintiff produced exhibit 1 which was the Demand letter to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, exhibit 2 which was the offer letter of allotment and exhibit 3 which was a Bankers Cheque of Kshs. 2,000/= dated 27<sup>th</sup> May, 1997.
11. On cross examination, the Plaintiff told the court that she applied for the plot through the County Government of Makueni now defunct County Council of Makueni and was issued with an allotment letter dated 3<sup>rd</sup> April, 1997 which came from the Commissioner of Lands. She also narrated to the court that she bought a Bankers Cheque dated 27<sup>th</sup> May, 1997 upon receiving the allotment letter dated 3<sup>rd</sup> April, 1997. Further, that payment was supposed to be done within 30 days upon issuance of allotment letter. That the Bankers Cheque of Kshs. 2,000/= was the deposit for the money required whose total sum was Ksh. 11,970/=. She also told the court that she did not pay the amounts as set out in the letter of allotment despite the knowledge that the offer would lapse incase payment is not made within 30 days. The Plaintiff stated that she paid the money in the sum of Kshs. 11,970/= in the year 1997 but has no proof to show that the Commissioner of Lands received the amount. She admitted to being aware that there was construction on the plot and she knew where the Plot was located.
12. On re-examination, the Plaintiff told the court that applications for allotment letter would be made and people would deposit some money with the County Government and that the allotment letters would take time before the Commissioner of Lands could issue the same. That the Kshs. 2,000/- payment she made was half of what was required and that they were allowed to pay the rates in instalments. The Plaintiff admitted that she only learnt of the new allotment sometime in the year 2014.
13. The 4<sup>th</sup> Defendant presented her case before the court on 16<sup>th</sup> November, 2018 in which she stated that she was allocated Plot number 63 by the County Government of Makueni and was issued with an allotment letter on 10<sup>th</sup> June, 1997. That prior to this, she was not aware that Plot number 63 had been allocated to the Plaintiff. That on 3<sup>rd</sup> June, 2015, she visited the County Government offices where she confirmed that the plot was indeed registered in her name. During further defence hearing on 7<sup>th</sup> May, 2019, the 4<sup>th</sup> Defendant told the court that she has constructed a residential property on the plot.
14. At the close of the hearing the 4<sup>th</sup> Defendant had not produced the documents she intended to rely on.
15. The Plaintiff in her Written Submissions dated 14<sup>th</sup> November, 2019 raised the following issues for determination:-
  - a) **Whether or not the Plaintiff was allocated the subject parcel of land and if so whether she is the bonafide allottee of the subject parcel of land;**
  - b) **Whether or not any subsequent allotment of the subject parcel of land to other parties and/or to the 4<sup>th</sup> Defendant is null; and**
  - c) **Whether or not the Plaintiff is entitled to the orders sought herein.**
16. It is the Plaintiff's submission that she was allocated the suit plot via allotment letter dated 3<sup>rd</sup> April, 1997 and fulfilled the conditions set out therein and duly paid the for the same as indicated in exhibit number 3. That the Government Lands Act (Cap 280) (now repealed) gave the President powers to alienate Government Land and this power was delegated to the Commissioner of Lands who exercised this function accordingly. The Plaintiff further submitted that even though the 4<sup>th</sup> Defendant may have been allocated the land, there was no revocation of the allocation of the land to the Plaintiff since there was no refund of the money she paid. That the purported letter of allotment issued to the

4<sup>th</sup> Defendant was done after she had been allocated the land. That the 4<sup>th</sup> Defendant has not produced evidence that she made an application and paid money before the suit land was allocated to her. As such, the land having been allocated to the Plaintiff, the same was not available for further allocation and any action on the land thereafter is considered as null.

17. It is also the Plaintiff's submission that it is the Chief Land Registrar's mandate to register and issue a certificate of lease to the respective proprietors. As such, the 1<sup>st</sup> Defendant is rightly sued since the orders sought in the Plaintiff on registration and issuance of the title documents can only be executed by the Land Registrar.

18. The 1<sup>st</sup> Defendant in its written submissions dated 3<sup>rd</sup> December, 2019 raised the following issues for determination:-

**a) Whether there is any claim against the 1<sup>st</sup> Defendant;**

**b) Whether the Plaintiff complied with the conditions set out in the letter of allotment;**

**c) Whether the 1<sup>st</sup> Defendant should pay costs.**

19. The 1<sup>st</sup> Defendant submits that from the Plaintiff's testimony, it is evident that the suit land is unregistered as there is a procedure for allocation of public land which begins with allocation of a plot and ends up with the Land Registrar issuing a title document. The 1<sup>st</sup> Defendant has laid out the procedure to be followed in allocating public land to individuals and it is its submission that the suit land did not crystallise to the registration stage and therefore prayer b of the Plaintiff cannot be granted at this point.

20. It is also the 1<sup>st</sup> Defendant submission that the Plaintiff did not comply with the conditions as set out in paragraph 2 of the allotment letter. That the offer lapsed on completion of 30 days for failure to pay the amounts stated of Kshs. 11,970/=. Further, that the Plaintiff did not adduce evidence to show payment of the full amount to meet the condition for allocation of the suit land. In support thereof, the 1<sup>st</sup> Defendant relied on the case of Lucy Nchebeere v Rose Ndululu Musee [2015]eKLR which relied on the case of Ahmed Obo versus Kenya Airport Authority ELC Case No. 141 of 2013

21. To further buttress the issue of a party to a suit meeting the conditions as set out in the allotment letter, the 1<sup>st</sup> Defendant cited the Court of Appeal observation in Joseph Arap Ng'ok v Justice Moijo Ole Keiwua, Nairobi Civil Application No. 60 of 1997 and Wreck Motors Enterprises V The Commissions of Lands & 3 Others, Nairobi Civil Appeal No. 71 of 1997 (Unreported)

22. It is the 1<sup>st</sup> Defendant's submission that it should not be condemned to pay costs since there is no claim against it. Instead, the Plaintiff should be condemned to pay costs for dragging the 1<sup>st</sup> Defendant to court.

23. The 4<sup>th</sup> defendant did not file any submissions.

24. I have considered the pleadings and the evidence on record. I have also considered the submissions filed by the Plaintiff and the 1<sup>st</sup> Defendant. It is not in dispute that the Plaintiff was issued with a letter of allotment dated 3<sup>rd</sup> April, 1994. It was for Plot No. UNS.B.C.R. Plot 63 Wote Town. It is also not in dispute that the 4<sup>th</sup> Defendant, was issued with a letter of allotment dated 10<sup>th</sup> June, 1997 for the same suit land. Neither the Plaintiff nor the Defendant have exhibited a letter of application for the plot.

25. The issues for determination are:-

**a) Who is the legal owner of the suit land?**

**b) Whether the Plaintiff is entitled to the relief sought herein.**

**c) Who should bear the costs of this suit?**

26. It is the Plaintiff's case that she was allocated the suit land on 3<sup>rd</sup> April, 1997 and fulfilled all the conditions contained in the allotment letter therein. It was confirmed during the hearing that she paid Kshs. 2,000/- as deposit. However, she did not confirm full payment of the amounts as stated in the allotment letter, the amount being Kshs. 11,970/=. Infact, in her letter of acknowledgment dated 27<sup>th</sup> May, 1997, the Plaintiff enclosed a cheque of Kshs. 2,000/- as **'being part of the payment of the amount stated in your letter of approval'**. It also clear that the Plaintiff made the part payment and acknowledged the offer way after lapse of the 30 days conditional period contained in the allotment letter. As it is, the Plaintiff relies on the allotment letter dated 3<sup>rd</sup> April, 1997 in a bid to lay claim on the suit land.

27. On the hand, the 4<sup>th</sup> Defendant, lays claim of the suit land vide an allotment letter dated 10<sup>th</sup> June, 1997.

28. In the case of Joseph Arap Ng'ok vs Justice Moijo Ole Keiwua [1997] eKLR the Court of Appeal stated thus:

**"It is trite law that such title to landed property can only come into existence after issuance of the letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of the title document pursuant to the provisions of the Act under which the property is held".**

29. The Plaintiff, in my view did not establish to the satisfaction of this court proof that she fulfilled the conditions as set out in paragraph 2 of the letter of allotment dated 3<sup>rd</sup> April, 1997. I find that her right was extinguished when she failed to comply with the conditions set out in the letter of allotment. I find that she has failed to prove her case as against the Defendants on a balance of probabilities. She is not entitled to the reliefs sought in the plaint. The suit is dismissed with costs to the 1<sup>st</sup> and 4<sup>th</sup> defendants.

**DATED, SIGNED AND DELIVERED VIA EMAIL ON THIS 8TH DAY OF FEBRUARY, 2022.**

**MBOGO C. G.**

**JUDGE**

**8/2/2022**

**IN THE PRESENCE OF:**

**CA:T.CHUMA**