



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL CASE NO. 79 OF 2011

PAUL MUREITHI JORAM AND 9 OTHERS PLAINTIFFS

VERSUS

EVANS ORENGE ONDERI DEFENDANT

JUDGMENT

INTRODUCTION

1. The ten (10) plaintiffs brought a suit against the defendant seeking the following reliefs;-
 - (a) A declaration that they are the legal owners of Plot Nos A, B, C, D, E, F, H, J, N, and R and that title No. Kitale Municipality Block 7/342 was obtained through fraud.
 - (b) A declaration that title No. Kitale Municipality Block 7/342 in the names of the defendant is subject to overriding interest being the plaintiffs joint and individual occupation.
 - (c) An order of injunction restraining the defendant from evicting them from the aforesaid plots.
 - (d) Costs and interest.
2. The defendant filed a defence to the Plaintiffs claim and raised a counterclaim in which he sought the following reliefs;-
 - (a) *A permanent injunction restraining the plaintiffs their agents, servants or anyone claiming through them from interfering with his use and enjoyment of Kitale Municipality Block 7/342.*
 - (b) *A declaration that he is the lawful owner of Kitale Municipality Block 7/342.*
 - (c) *Mesne profits with effect from 11/5/2011 till judgement and till the eviction of the plaintiffs from the said parcel.*
 - (d) *Costs and interest.*
3. The Plaintiffs consist of ten (10) individuals who contend that they were allotted plots mentioned in their statement of claim by the Government of Kenya.
4. The Defendant is the registered owner of Kitale Municipality Block 7/342.

PLAINTIFFS CASE

5. The Plaintiffs contend that in 1995 they approached the District Plots allocation Committee for Trans Nzoia District which allotted them plots within Kitale Municipality. They produced the minutes of the District Plot allocation Committee through Wilson Muigai Wachira the sixth plaintiff herein.
6. The plaintiffs were given allotment letters on 7/2/2002. In the year 2011, the defendant gave the plaintiffs a quit notice claiming that the plot on which they were operating on belonged to him. It is on the basis of the quit notice from the defendant that they moved to court seeking the reliefs mentioned hereinabove.

DEFENDANT'S CASE

7. The defendant contends that he is the registered owner of plot No. Kitale Municipality Block 7/342. He contends that he bought the plot in issue from one Elizabeth Muthoni Guantai on 19/4/2011.

ANALYSIS OF EVIDENCE

8. The Plaintiffs contention is that the title which is held by the defendant was obtained on the basis of a Part Development Plan (PDP) which was later superceded by another one. Initially there were three PDP's which were touching on the plots in issue. These are PDP Nos KTL 10/95/112, KTL 10/96/45 and KTL 10/96/105 A. It is alleged that the three PDP's were later superceded by PDP No. KTL 10/97/4.
9. The PDP which enabled processing of title in respect of Kitale Municipality Block 7/342 is PDP, No. KTL 10/96/45. In this PDP there were five plots created. These are plot Nos 342, 343, 344, 345 and 346. This PDP was duly approved and has been used to process titles in respect of the five plots.
10. PDP NO.KTL 10/97/4 created 19 plots marked A to U. When this PDP was forwarded to the then Ministry of Lands and Settlement, the Commissioner of Lands vide his letter of 16/11/1999 queried why this particular PDP was superceding PDP Nos KTL 10/95/112, KTL10/96/45 and KTL 10/96/105 A. In a response to the Commissioner's letter, the District Physical Planning Officer Trans – Nzoia, in a letter dated 14/12/1999 explained that the three PDP's had been prepared for some beneficiaries of plots but it was later realised that there were other people on the ground who had not been taken care of. It was therefore decided that one DPD incorporating all those who were on the ground be prepared, hence PDP No. KTL 10/97/4.
11. It is apparent that there was no action taken to actualise PDP No.KTL10/97/4 as it was never approved as required and the earlier PDP's were used to generate titles for 5 individuals including Plot No. 342 which the defendant bought from the original allottee Elizabeth Muthoni Guantai.
12. The issue which arises for determination is whether the defendant obtained his title fraudulently. The plaintiffs contend that since the title was obtained based on a PDP which had been superceded, then the same was fraudulently issued. The plaintiffs called PW2 James Nyamari Osoro a Principal Land Administration Officer Trans Nzoia County. This witness testified that the allotment of Plot No. 342 was on the basis of PDP 10/96/45 prepared on 22/2/1996. This PDP created five plots one of which was allotted to Elizabeth Muthoni Guantai. He testified that each of the 5 allottees were supposed to get 0.045 of an hectare. He testified that when the surveyor went to the ground, he discovered that there were other people on the ground and that the land was not enough for each of them to get 0.045 hectares they had been allotted. He stated that the problem arose because PDP NO. KTL 10/96/45 was prepared without a site visit.
13. PW2 went on to state that when this problem came to his attention, he wrote a letter to the Director of Survey asking him to do a fresh survey. This letter was produced as exhibit 8. It is

important to note that this letter was written on 9/6/2011. This was long after Elizabeth Muthoni Guantai had been given letter of allotment, a lease given and certificate of title issued.

14. PW2 stated in his evidence that there was nothing wrong in the manner in which the defendant obtained his title. In fact it was him who gave consent to the defendant to transfer the Plot No. 342 from Elizabeth Muthoni Guantai to himself. The transfer was effected and the defendant obtained certificate of title which got lost but he applied for a replacement which was duly Gazetted [exhibit 17] and he is only waiting for a replacement. He however produced an official search [Exhibit 14] which shows that he is the registered owner of Kitale Municipality Block 7/342.
15. The defendant bought the property from Elizabeth Muthoni Guantai who had been allotted the same vide allotment letter dated 24th July, 1996 [exhibit 2]. She obtained a certificate of lease [exhibit 3].
16. The defendant bought the land from Elizabeth Muthoni Guantai at one million shillings as per sale agreement [exhibit 11]. He duly applied for consent to transfer the land as per exhibit 12. The property was duly transferred to his name and an official search [exhibit 14] shows that the property is in the defendant's name. There is only a restriction registered on it by the Land Registrar as a result of the current dispute.
17. PW3 Emmanuel Mutange is the Deputy County Surveyor Trans Nzoia. He produced a certified copy of PDP No. KTL 10/96/45 which was duly approved. He also produced a Registry Index Map showing five plots one of which belongs to the defendant.
18. PDP NO. KTL 10/97/4 was never approved and was never acted upon. As I said before in this judgement, the titles have already been processed and given to the five allottees. It is therefore not realistic to argue that the said PDP superceded all the previous PDP's.
19. There is no doubt that the District allocation Committee Trans Nzoia District allocated the plaintiffs land. There is also no doubt that the 10 (ten) plaintiffs were given allotment letters. The allotment letters were produced in evidence. The plaintiffs never went beyond the allotment letters. There is no evidence that they paid all the amounts indicated in the allotment letters. They never got a lease and no certificate of leases were issued to them.
20. From the letters produced in evidence, it is clear that the allotting authority that is the Government is not faulting the manner in which the five allotments were made. There were various suggestions made by the same Government. One of the suggestions was to persuade those who had already had their certificate of leases to surrender them so that their plots could be reduced to accommodate others like the plaintiffs. There was also another suggestion that those with certificate of leases arising from the initial five plots be given alternative land so that those on the ground could be left on the ground. These were just but suggestions and there is no evidence that any of the suggestions was or is being pursued.
21. The position as at present is that five allottees including Elizabeth Muthoni Guantai who sold her interest to the defendant have their titles. The titles were legally obtained and the Government officials including PW2 and DW3 have confirmed as much. The plaintiffs had enumerated particulars of fraud against the defendant and none of those were proved leave alone being mentioned by the witnesses during their testimony.
22. In Nairobi Civil appeal No. 53 of 1995 Michael Githinji Kimotho -Vs – Nicholas Muratha Mugo the respondent who was a registered owner had sued the appellant seeking possession from the appellant who had been in possession for a long time as a squatter. The appellant had also contended that he had been in possession as a squatter for a very long time and had carried out some development on the suit land. The appellant further contended that the allotment of the suit land to the respondent by the Government of Kenya was unlawful and erroneous. In dismissing the appeal the court of Appeal said at page 3 as follows;-

“.....If the appellant had been in occupation of the suit land as a squatter without any right or title to the suit land in his favour, he was obviously in no position to resist the respondent's claim. Though the appellant had for along time been in occupation of the suit land, which was Government land before it was allocated to the respondent, this could not have helped him in resisting the respondent's claim where the latter is registered owner of the land Even if

for arguement's sake the suit land had been erroneously allocated to the respondent, the appellant as a squatter in the suit land had no locus standi and the so called erroneous allocation could not be an answer to the respondent's claim for possession as the registered owner of the suit land. The issue whether the allocation of the land to the respondent was erroneous or not can only be an issue between the Commissioner of Lands and the respondent.”

23. In the case of Dr. Joseph N. K. Ngok -Vs- Justice Moiwo Ole Keiwa & Others Civil Application No. NAI 60 of 1997, the Court of Appeal held as follows;-

“..... that it is trite law that 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 pursuant to provisions in the Act which the property is held”

24. In the present case, the defendant was a bonafide purchaser for value. He did not know that there was any problem with the plot. The person who sold him land had been allotted the same and a certificate issued in accordance to the Act under which the property was held. There is therefore no ground upon which his title can be faulted. If there was any mistake on the part of the Government officials in preparation of the PDP's, that cannot affect his title. The position as it is that the property is registered in the names of five persons. The defendant herein is a purchaser of one such plot being the subject of this suit.

25. The defendant had counter claimed and asked for injunction against the plaintiffs. He has demonstrated that he is the registered owner of the suit land. He obtained it in a legal manner from someone who was lawfully allotted the same. The plaintiffs have really no business remaining on the defendant's land.

DECISION

26. After a careful analysis of the evidence adduced, I find that the plaintiffs claim is not maintainable. The same is hereby dismissed with costs to the defendant. I find that the defendant has proved his counterclaim except the prayer for mesne profits which I find no basis upon which to grant the same. I therefore declare that the defendant is the lawful owner of Plot known as Kitale Municipality Block 7/342. A permanent injunction is hereby issued restraining the plaintiffs, their agents, servants or anyone claiming through them from interfering with the defendant's enjoyment of Kitale Municipality Block 7/342. The plaintiffs should vacate the defendant's land within 3 months or be evicted.

The plaintiffs shall pay costs of the counter-claim to the defendant.

Dated, signed and delivered at Kitale on this 17th day of March, 2014.

E. OBAGA,

JUDGE

In the presence of Mr Kiarie for Yano for defendant. Court Clerk Kassachoon.

E. OBAGA,

JUDGE

17/3/2014

