



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ITEN

ELCA NO. E001 OF 2024

ALEX KIPSANG

KIPTOO.....APPELLANT/APPLICANT

VERSUS

HELLEN

MEUT.....RESPONDENT

JUDGMENT

(Appeal arising from the Judgement of Hon. Purity Kosgei SPM delivered on 4th January 2024, in Kabarnet ELC No. 19 of 2019)

Introduction

1. By a plaint dated 9th July, 2019 the plaintiff now appellant, instituted a suit in the lower court to wit

Kabarnet ELC No.19 of 2019 seeking judgment against the defendant, now respondent, for:-

- i) A permanent injunction restraining the defendant by herself, her agents, servants, employees and relatives from interfering by disposing through sale, transferring, alienating, building, entering, destroying any fixture or attachments, grazing, cultivating or fencing in whatsoever manner the parcel of land known as plot No.361 in Marigat centre/town in Marigat location.
- ii) An order directed to the defendant to pay the plaintiff Kshs.178,200/- for losses caused by the defendant;
- iii) A declaration that the plaintiff is the bonafide and/or registered owner/allotee of land title number plot No.361 in Marigat centre/town in Marigat;
- iv) Cost of the suit and other reliefs just and equitable.

2. As can be discerned from the averments on the face of the plaint, the appellant's suit was premised on the

grounds that he (the appellant) is the registered owner/allotee of plot number 361 (*suit plot*) in Marigat centre/town in Marigat location; that the defendant had encroached /trespassed on the suit plot and attempted to utilize it in a manner and style adverse to his rights over it.

3. It was the appellant's pleaded case, that owing to the respondent's actions complained of, he had suffered loss and damages (The particulars of trespass and loss and damage are listed in paragraph 4 and 5 of the plaint).
4. Lamenting that efforts to get the respondent to stop the actions complained of were futile, the appellant instituted the suit referred to herein above seeking the reliefs listed above.
5. Upon being served with the suit papers, the defendant filed a statement of defence dated 27th August, 2019 in which she denies the allegations contained in the plaint and contends that no letter of allotment has been issued in respect of the suit plot; that if the appellant is

in possession of a letter of allocation in respect of the suit plot, the same is a scam and a result of a fraudulent scheme to grab the suit plot; that the appellant has never been in occupation of the suit plot and that she is the one who has at all times been in use and possession of the suit plot.

6. Terming the appellant's suit a scheme by the appellant to unfairly settle on the suit plot using unorthodox and dubious means, the respondent urged the court to dismiss the appellant's suit with costs to her.
7. When the case came up for hearing, it emerged that the appellant is in possession of a letter of allocation issued by the County Council of Baringo. It also emerged that the letter of allotment was not accompanied by a Part Development Plan (PDP) making it impossible to confirm whether the plot allocated to the appellant corresponds with the suit plot on the ground.
8. Owing to the above defect or irregularity in the letter of allotment issued to the appellant, among other pieces

of evidence adduced before the trial court, the learned trial magistrate *inter alia* stated/held:-

“...The evidence of the county is that the documents in the possession of the plaintiff has no corresponding land on the ground and further that planning has not been done. The court was told that the county is in the process of planning that zoned area. DW4 further told the court that the plaintiff’s letter of allotment is incomplete as it is not accompanied by a Part Development Plan and a number; that number 361 claimed by the plaintiff is not ascertained in terms of numbering and has no corresponding ground. DW 4’s evidence is that the county will see where to place those having allotment letters. DW4 could not tell if number 361 claimed by the plaintiff will land on the plot claimed or not.”

9. Based on the decision of this court in **Lagat v Kebut (Environment and Land Appeal E021 of 2022)**

(2023) KEELC 18432 (KLR) (26 June 2023)

(Judgment), the learned trial magistrate stated/held:-

“It therefore follows that the conditions enumerated in the allotment letter has not been met. The position of the County according to DW4 is that those with allotment letters will be settled. The plaintiff has not sufficiently demonstrated that his said land can be identified on the ground. It therefore behooves the plaintiff to claim from the County government of Baringo who is still receiving rates from him”.

10. In the case of **Lagat v Kebut** *supra*, this court stated as follows regarding the import of a Part Development Plan (PDP) in allocation of land:-

- i. **“It is emergent that a litigant basing their interest on the foundation of an allotment letter must provide the following proof: First, the allotment letter is 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 is not mandatory, based on the stage of the transaction, to have a certified beacon certificate."

11. Besides the irregularity/gap in the letter of allotment relied on by the appellant, the learned trial magistrate also relied on other pieces of evidence adduced before her and observation made by the court during a scene visit on 7th August 2019. In that regard, the learned trial magistrate stated: -

"From the evidence on record and observations made by the court during the scene visit on 7/8/19 and the evidence of D4 that the land was originally owned by mzee Meut, I find that the defendant has established on a balance of probabilities that the suit plot is historically ancestral land and she's on the ground by virtue of occupation. The fate of the land ultimately awaits

planning, demarcation and numbering by the county government of Baringo.

The plaintiff's claim for special damages is unfounded as he descended on land that had not been identified to him by the County and the conditions in the allotment letter had not been met."

12. Dissatisfied by the decision of the trial court, the appellant appealed to this court on the grounds that the learned trial magistrate erred by:-
1. Finding that his plot was not identifiable on the ground yet he produced the allotment letter to show his plot;
 2. Holding that his plot was not identifiable yet there was evidence of payment of rates to the county government, which couldn't be the case for an unknown property;
 3. Creating ambiguity in her judgment by finding that the land in question belonged to Mzee Meut and at the same time holding that the fate of the land is still waiting planning, demarcation and numbering by the

county government, a contradiction on the face of the judgment as the appellant was in possession of an allotment letter which clearly depicts the plot number as 361 Marigat centre, therefore it's not clear from the judgment which numbering the learned magistrate was making reference to;

4. Finding that he descended on the land that had not been identified to him by the county government yet the same county government had issued him with an allotment letter. He wonders how an allotment letter can be issued on unidentified property;
5. Finding that the conditions of the allotment letter had not been met without identifying the conditions which had not been met;
6. Directing her mind on matters that were not placed before her like the existence of conditions that were attached to the allotment letter yet the same were not placed before her for consideration;
7. Dismissing his claim on special damages as unfounded merely because she was of the view that he had descended on land which had not been identified to him, this is despite the special damages

- _____
- _____ having been pleaded and proved by way of documentation;
8. Dismissing his case merely because the conditions attached to the allotment letter were not met;
 9. Finding that plot number 361 Marigat centre was not known where it will fall once demarcation is done thus indicating that he was paying rates for an unknown plot or one which does not exist.
13. The appellant prays that the appeal be allowed, the judgment of the lower court be reversed, the orders as to costs therein be set aside and the respondent be condemned to pay the costs of the appeal.
14. Pursuant to directions given on 8th July, 2024 the appeal was disposed of by way of written submissions.
15. In exercise of the duty vested in this court as a first appellate court, I have re-evaluated the evidence adduced before the lower court with a view of reaching my own conclusion on it. I have reminded myself that a first appellate court will not ordinarily

interfere with findings of fact by the trial court unless they were based on no evidence at all, or were based on misapprehension of the evidence or unless it is demonstrated that the trial court acted upon wrong principles in reaching the finding. In that regard, see **Selle & another vs. Associated Motor Boat Co. Ltd (1968)E.A 123 and Mwanasokoni vs. Kenya Bus Service Ltd (1982-88)1 KAR and Kiruga vs. Kiruga & Another (1988)KLR 348.**

16. From the pleadings filed in the lower court, the evidence adduced in respect thereof and the submissions by the parties, the issue that arises for the court determination is whether the plaintiff, now appellant, proved his pleaded case on a balance of probabilities. In answering that question, it is important to review the evidence adduced by the plaintiff/appellant regarding his claim to ownership of plot number 361 Marigat. In that regard, the plaintiff informed the court that in 2006, he applied for a plot from the county council; that on 3rd May, 2007 the county council replied to his application and he was

given an allotment letter; that the allotment letter had conditions and that the council staff were to show him the plot. He produced the allotment letter as exhibit 1.

17. The plaintiff further informed the court that on 28th December, 2009 council officers led by the area councillor, came and surveyed the plots; that he paid for physical planning and demarcation, his plot was measured and he had been paying rates in respect of the plot to the council. He produced receipts for payment of rates as Pexbt 2 and the receipt for payment for demarcation as Pexbt 3. He fenced the plot and erected a pit latrine. He produced photographs in respect of the latter as Pexbt 4.
18. In 2019 or thereabout, he found that his fence had been damaged. He erected a house in the suit plot at a cost of Kshs. 178, 200/- which house, the defendant destroyed. He reported the matter to the police. The Police came to the scene, took photographs but did not charge the defendant in court.

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19. Concerning the defendant's claim that the suit plot is her ancestral land, he stated that he was given the suit plot by the county council and that it is not ancestral.
 20. The plaintiff/appellant further informed the court that the defendant has her own plot next to his plot.
 21. In cross examination, the plaintiff/appellant stated that he did not have the application letter; that he is not aware of other people with application letters in the area and that he had no map for the area.
 22. On whether he was shown his plot, he stated that a surveyor from the county council showed him his plot and also showed the defendant her plot. He stated that he was not there when the surveyor showed the defendant her plot. He stated that about 9 plots were shown to the owners.
 23. Concerning the receipts produced in support of his claim for general damages, the plaintiff/appellant

admitted that some were from his Hardware company,
Alkaline Enterprises.

24. With regard to when the dispute between him and the defendant over the suit plot began, the plaintiff informed the court that the dispute began in 2012.
25. In re-examination the plaintiff/appellant asserted that the county council personnel came to the ground to show plots to the owners.
26. Concerning the status of the suit plot at the time he testified, the plaintiff/appellant stated that the plot was vacant.
27. On further cross examination, the plaintiff/appellant admitted and/or acknowledged that the allotment letter he relied on in support of his claim that he was allocated plot number 361 had no plot number. He also admitted that the allotment letter had no map attached to it.

28. In further re-examination, the plaintiff/appellant stated
as follows:-

“...Allotment was signed by Peter Kaitany the Clerk. It had conditions. I was to develop after being shown the plot. My fence was destroyed on 29th March 2018. ...in 2009 county officers arrived to show me my plot. I fenced my plot. I am interested in my plot not my neighbours around the plot...I applied for business plot and got it through allotment letter. Hellen (defendant) and family did not give me any plot. The plots were for the county government.”

29. From the plaintiffs own evidence/testimony, it is clear that the issue of the conditions attached to the letter allotment was raised by the parties during hearing and formed a key issue for determination on the issue before the court. While the appellant faults the trial magistrate for addressing the issue of the condition attached to the letter of allotment, it is clear that it was a live issue raised before the court and which the court in determining the issues arising therefrom, was

entitled to consider and make a determination in respect. This was critical because in the circumstances of this case, the letter of allotment had no reference to any particular property. In the circumstances, it was incumbent upon the appellant to prove to the satisfaction of the court that the conditions set in the letter of allotment were actually met culminating in allocation of the suit plot to him.

30. The condition attached to the letter of allotment were as follows:-

“Do not develop the plot until the following have been done:-

(a) Showing of the plot

(b) Demarcation of the plot

(c) Numbering of the plot

(d) Planning of the site

(e) Granted permission by the office...”

31. Whilst in his evidence the plaintiff led evidence that shows that he paid for demarcation of the plot leading to numbering of the plot, he did not avail a witness from the county government to support his claim that

the area was surveyed and the persons allocated plots, in the area, himself included were shown their plots.

32. His testimony to the effect that the area was planned and the persons allocated plots in the area, was countered and controverted by DW4, an officer from the County Government of Baringo who testified as follows:-

“I have the letter of allotment (Pexbt 1), it originates from our office. I know the suit land. The letter of allotment is incomplete. We need another letter showing Part Development Plan (PDP) and number to enable me authenticate the land. The letter may not relate to the land Alex is claiming. The land in question is a planned area in Baringo. It is not surveyed or allocated numbers. It is in our plans as schedule four....The land in question doesn't have a number as we speak...361 is not ascertained in terms of numbering....I know the land Mzee Meut owned the land initially, part of the land....We have such people with allotment letters that have not landed on the ground. We shall see where to

place them. Parcel 361 has no corresponding ground.”

33. Upon reviewing the totality of the evidence adduced in this case and the plaintiff/appellant having not laid any basis for doubting or disregarding the testimony of DW4 to the effect that the area is yet to be surveyed and that parcel 361 claimed by the appellant has no corresponding ground or is incapable of being ascertained whether it is the parcel occupied by the respondent, I find and hold that the appellant has not formed a basis for interfering with the decision of the lower court. Consequently, I dismiss the appeal with costs to the respondent.

**Dated, signed and delivered virtually at Kabarnet
this 16th day of September, 2025**

**L. N. WAITHAKA
JUDGE**

Judgment delivered virtually in the presence of;-

Mr. Mukoit for the appellant

Mr. Kemboi

Court Assistant: Ian