



**Shurie v Bundid (Environment and Land Case 9 of 2018)
[2025] KEELC 6183 (KLR) (24 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6183 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT AND LAND CASE 9 OF 2018
JM MUTUNGI, J
SEPTEMBER 24, 2025**

BETWEEN

ABDINOOR SHURIE PLAINTIFF

AND

HALIMA BUNDID DEFENDANT

JUDGMENT

1. The Plaintiff Abdi Noor Shurie, instituted the instant suit by way of a Plaint dated 19th February 2018. The Plaintiff's claim was that he was the owner of Plot No. GSA/1906 measuring 0.11 Hectares located at Bulla Sarman Garissa County. He averred that he had inherited the plot from his deceased father and that the plot had been owned by their family from 1978. The Plaintiff further averred the Defendant had unlawfully laid claim over the same land and that various attempts to resolve the ownership dispute had not yielded results and hence the suit.
2. The Plaintiff in the Plaint prays for Judgment against the Defendant for:-
 - a. A declaration that the Plaintiff is the legal owner of the piece of land situated at Bulla Sarman, Garissa County.
 - b. A permanent injunction order restraining the Defendant or any other party whether by himself, agents and/or servants or whomsoever is acting on his behalf and claiming and trespassing or anyway interfering with the land.
 - c. General damages.
 - d. Cost of the suit plus interest thereon.
 - e. Any other relief this honourable Court may deem fit and just to grant.



3. The Defendant vide a statement of Defence dated 19th January, 2022 denied the contents of the Plaintiffs' Plea and she asserted she was the owner of the disputed parcel of land having inherited the same from her deceased father, one Bundid Haji. She contended the Plaintiff could not have been allocated the land when it was owned by her late father. She prayed that the Plaintiff's suit be dismissed and he be restrained by way of injunction from in any way dealing with or interfering with her plot that she described as plot GSA/1898.
4. The suit was heard before Cheron, J when he served at Garissa ELC but was transferred before Judgment was delivered and the file for reasons that are not evident went missing only to be retrieved in 2025 after the Plaintiff's Advocate filed an application to have the file reconstructed. It then fell on me to peruse the Record and the evidence adduced by the parties and to prepare the Judgment.

Evidence of the parties.

5. The Plaintiff testified that he had owned plot No. 1906 at Ifitin Sub location from 1990 when his father, who hitherto owned the same died. He stated following his father's death he inherited the plot and that he held the same in trust on behalf of his siblings. He stated that they had fenced the plot. He testified that the Defendant sometime after they had occupied their plot came and cleared some bush next to their plot and started living there.
6. The Plaintiff testified that in 1997 he applied to be registered as the owner of the plot and that the Municipal Council Garissa issued him documents of ownership. He stated the Defendant's son, one Abdi Kassim was charged with trespass onto his land but at the time of hearing on 23rd June 2022 the case had not been concluded. The Plaintiff stated further that he had recorded and filed a witness statement that he wished to be adopted and treated as his evidence and further had filed a bundle of documents as per the list dated 22nd November 2019 containing 13 items that he wished to rely on and additionally filed a Supplementary Bundle of Documents as per list dated 18th February 2022 which he equally wished to rely on as his evidence. The documents were admitted in evidence as PEXI – 16 as listed in the primary bundle and Supplementary Bundle respectively. He stated as per the Survey report included in the bundle of documents, the Plaintiff cited the plot No. GSA/1906 and Plot No. GSA/1998 were overlapping. The Plaintiff testified that efforts to resolve the dispute through the elders and the Local Administration were unsuccessful and thus urged the Court to grant him the prayers sought in the Plea.
7. In Cross examination the Plaintiff stated that the Municipal Council vide the minutes of the meeting held on 13th June 1997 (PEX2nd) approved his allocation of the plot No. GSA/1906. He however affirmed the meeting did not specifically refer to plot No. GSA/1906. He stated he was issued documents that referred to the plot as GSA/1906. He stated he was issued a letter by the Council which confirmed the plot to be his and that he was paying land rates and was issued receipts for the payments. The Plaintiff asserted that his father gave him the land before he died and that by that time the plots had no documentation.
8. The Plaintiff called two witnesses, PW2 and PW3 who in their testimony adopted their recorded and filed witness statements. Their evidence was to the effect that they knew the Plaintiff to be the owner of the disputed plot as they were neighbours. PW3 testified that, the Plaintiff came to live at the disputed land in 1979. It was his evidence that people were freely occupying and living on land at that time. He explained that his mother at around the same time came and occupied land near the Plaintiff's family land. It was his position that acquisition of the land was through occupation as the land did not belong to anybody. He however stated the Plaintiff obtained documentation for his land from the Council.



In cross examination PW3 affirmed that he learnt the Plaintiff had a dispute concerning the disputed land with someone else.

9. The Defendant in her evidence adopted her witness statement dated 19th January 2022. It was her evidence that she acquired the suit land from her father, Bundid Haji and that she had been living on the suit land for a long time. The Defendant further relied on the bundle of documents (4 exhibits) filed on 19th January 2022. The Defendant stated there were attempts to resolve the dispute between her and the Plaintiff which were unsuccessful. She testified that the National Land Commission investigated the dispute and resolved that the land belonged to her as per the report she had tendered in evidence. The Defendant maintained that the suit land belonged to her and prayed for the Plaintiff's suit to be dismissed and for an award of damages to her for the losses she had suffered.
10. In Cross examination the Defendant stated she had been paying rates to the Municipal Council and that she was registered as the owner of the plot by the Council. She stated she inherited the plot from her father and that she had been living on the land. She stated the Council had given her a letter confirming she was the owner of the land. She testified it was the Plaintiff who had referred the dispute to the National Land Commission who ruled that the plot belonged to her.
11. The parties filed their closing submissions. The Plaintiff's submissions are dated 2nd January 2023 while those of the Defendant are dated 21st September 2022. I have reviewed and considered the pleadings and the evidence adduced by the parties and have further considered the submissions filed on behalf of the parties.

The following issues arise for determination:-

1. Whether the Plaintiff has proved ownership of plot No. GSA/1906 Garissa measuring 0.11 Hectares?
 2. Whether the Defendant has proved ownership of plot GSA 1898 Garissa and whether the plot overlaps with plot No. GSA 1906 claimed by the Plaintiff?
 3. What relief if any, should the Court grant?
12. On the evidence both the Plaintiff and the Defendant claim ownership of two distinct and different plots. The Plaintiff claims Plot No. GSA/1906 and the Defendant claims plot No. GSA/1898 both located within Garissa Township. What is clear is that the plots are unsurveyed and unregistered and hence have no title documents. The process of allotment is equally unclear as both the Plaintiff and the Defendant claim to have inherited the plots from their respective deceased fathers. An extract of the Municipal Council of Garissa Minutes of a meeting held on 13th June 1997 under Min 2/06/1997 indicates the Plaintiff Abdi Nur Shurie among others had made an application to the Council. Under Min 3/06/1997 the Council by resolution approved the 3 Applicants to be allocated residential plots measuring approximately 0.11 Ha by the Clerk of the Council. The Plaintiff did not adduce any evidence to demonstrate there was a Part Development Plan (PDP) that identified the location of the plots that were to be allocated. On 12th March 2009 the Town Clerk issued a letter titled "To whom it may concern" in regard to Plot GSA/1906 whose content was as follows:-

"The above mentioned plot is registered in the name of Abdi Noor Shurie of ID No. 00XXXX85 as per the Council Records. The Plot is situated at Bulla Sarman.

The size of the plot is 0.11 Ha as per the attached location plan. He has cleared all the rents upto and including December 2009. Any assistance accorded to him will be highly appreciated.



Signed

C. M Ndambo

Town Clerk

13. The same Town Clerk incidentally also vide a letter dated 25th May 1998 titled “To whom it may concern” wrote as follows in regard to plot GSA/1898:-

“The plot above is registered with the Council in the name of Halima Bundid Haji of ID. NO. 003XXXXX16 and Audi Idle Kassim ID No. 213XXXXX07.

The plot is situated at Daaro Village in Bulla Location. The plot measures approximately 200ft by 200ft.

Any assistance accorded to them is high appreciated.

Signed

C.M Ndambo

Town Clerk

14. It is of note that the meeting of the Council of 13th June 1997 that supposedly authorized the allocation of the suit plot to the Plaintiff made no mention of plot No. GSA/1906 or any other plot. The location plan attached to the letter dated 12th March 2009 did not specify any plot and indicates the shown plot was owned by three (3) persons who included the Plaintiff with each owning 2 plots, The Plan/2011/063 suggests the Plan was prepared in 2011 and it is unclear how it was attached to a 2009 letter.
15. A joint Survey report dated 6th April 2021 carried out by the County Surveyor, George Nyambane Nyanaro concluded that the two plots GSA/1906 and GSA/1898 were overlapping and therefore on the same spot on the ground. It is thus possible that there was double allocation by the Municipal Council. Without clear evidence of when the allotments were made, it is difficult to determine who the rightful owner of the disputed plot was. The resolution of the Council of 13th June 1997 approving the allocation of plots to the Plaintiff and others did not allocate any specific plot and cannot be deemed to constitute an allotment of the disputed plot to the Plaintiff.
16. An allotted plot must be capable of being identified and that explains why an allotment letter must be accompanied by a Part Development Plan (PDP) showing the location of the plot allocated and its dimensions which assists in the identification of the plot on the ground. The letter dated 25th May 1998 from the Municipal Council confirming the Defendant and another to be owner of plot No. GSA/1898 cannot assist in the identification of the plot as there was no PDP. It is noteworthy that the letter indicated the Defendant’s plot was 200ft by 200ft yet as per the County Surveyors report the plot measured 0.889 Hectares. Though the Plaintiff claimed his plot was 0.11 Hectares the Surveyor’s report indicated it measured 0.865 hectares. It was therefore not possible those were the plots that the exhibited letters indicates were allocated as the sizes are marked by varying.
17. On the basis of the evidence the Plaintiff in my view has failed to prove he was allocated plot GSA/1906 by the Municipal Council of Garissa. Equally the Defendant has not proved ownership of plot GSA/1898. If there had been clear evidence of allotment of the plots, the Court would have been called upon to determine who was allocated the plot earlier than the other and since it appears to have been a case of double allotment, the Court would have invoked the equitable doctrine to hold the first allottee to be the owner of the land provided he/she had satisfied and complied with the terms of the allotment.



This was in recognition of the fact that once a plot is allocated the same ceases to be available for re allocation to another person unless the earlier allocation is lawfully revoked and/or cancelled. In the case of Wreck Motors Enterprises –vs- Commissioner of Lands & 3 Others (1997) eKLR the Court of Appeal stated thus:-

“---like equity keeps teaching us, first in time prevails so that in the event such as this one, unlike by mistake that is admitted, the Commissioner of Land issues two titles in respect of the same parcel of land, then if both are apparently on the face of them issued regularly and procedurally without fraud save for the mistake, then the first in time must prevail. It must prevail because without cancellation of the original title, it retains its sanctity.”

18. I am conscious that the dispute between the parties remains unresolved and it behoves them to seek the County Government to regularize and formalize the allotments. The Court cannot confer ownership in the absence of clear and credible evidence respecting the allocations which is lacking in the instant case.
19. The upshot is that I find and hold the Plaintiff has not proved his case on a balance of probabilities and I dismiss his case. On a careful review of the Defendant’s Defence, it is evident that she also pleaded a Counterclaim she sought a permanent injunction restraining any dealings with plot GSA/1898. That would only have been possible if she was found to be the owner of the plot GSA/1898. Ownership of the plot was not established to the required standard. Accordingly neither the Plaintiff nor the Defendant is entitled to the orders they prayed for.

I dismiss the suit with no order as to costs and each party will bear their own costs of the suit.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 24TH DAY OF SEPTEMBER 2025

J. M. MUTUNGI

ELC JUDGE

