



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NYAHURURU

ELCA NO 4 OF 2017

(FORMERLY NAKURU HIGH COURT CIVIL APPEAL No. 184 OF 2010)

JOSEPH KARANJA MWANGI

(Suing as the legal representative of the estate of

AMOS MWANGI GITHIGIA.....APPELLANT

VERSUS

STEPHEN NDUNG'U GICHURI.....RESPONDENT

Being an appeal against the Judgment of the Honorable Principal Magistrate T. MATHEKA in the Nyahururu Principal Magistrate's Court delivered on 24th June 2010

in

PMCC No. 5 of 2002

JUDGEMENT

1. What is before me for determination on Appeal is a matter which was partly heard and decided by T. Matheka Principal Magistrate (as she was then) in the Principal Magistrate's Court at Nyahururu, in Civil Case No. 5 of 2002 where the learned trial Magistrate, upon taking the defence evidence, delivered her judgment on the 24th June 2010 where she found that the Respondent/Plaintiff had established that he was the proprietor of plot number Nyandarua/Gathanji G.T /65. There was an order for eviction of the Appellant/Defendant from thereon as well as costs of the suit issued against him.

2. The Appellant, being dissatisfied with the judgment of the trial magistrate has filed the present Appeal before this court.

3. The grounds upon which the Appellant has raised in his Memorandum of Appeal include:

i. The learned Principal Magistrate erred in law in allowing the Respondent's claim when the said claim was filed out of time and no leave had been sought to extend time.

ii. The learned Principal Magistrate erred in law in awarding the Respondent the plot in issue when the Respondent's lease had expired.

iii. The learned Principal Magistrate erred in law and in fact in awarding the plot in issue to the Respondent in clear violation of the law applicable in leases and in particular where the Respondent had not fulfilled any of the conditions of the lease.

iv. The learned Principal Magistrate erred in law in issuing an order for eviction against the Appellant by the Respondent when the Respondent has an expired lease.

v. The judgment of the learned Principal Magistrate is against the weight of the evidence on record.

4. The Appellant thus sought for;

i. The judgment of the lower court be quashed and the lower court case be dismissed with costs, thus this Appeal be allowed with costs.

5. On the 26th May 2016, the original Appellant having passed away, was substituted by his legal representative whom I shall refer to as the Appellant for ease of reference.

6. By the consent, this Appeal was heard by way of written submissions wherein the Appellant filed his submissions on the 12th April 2018 while the Respondent filed his submissions on the 12th November 2018.

The Appellant's Submissions.

7. That the suit land which was known as Nyandarua/Gathanje/65 was issued to the Respondent for 33 years with effect from the 13th March 1971 time which expired on the 1st March 2004 during the pendency of the suit. There had been no renewal for the lease thus the Appellant's submission was that lack of a renewal of the lease meant that the land had automatically reverted back to the Government.

8. That since the Respondent had not commenced any developments upon it, the suit land had been subsequently allotted to the Appellant who then started constructing on the same. The Appellant's submission thereof, is that the Respondent had become aware that the Appellant was constructing on the suit land in the year 1999. The suit land having been allotted by the Government, claim for the same ought to have been brought under the provisions of the Government Land Act, within 1 (one) year, instead, the suit was filed in the year 2002 which was time barred by virtue of the provisions of Section 136 (1) of the Government Land Act, a fact which the trial Magistrate made no finding.

9. In so submitting, the Appellant relied on the decided cases of **Charles Mwangi Kagonia vs Dhraj D. Popat & Another [2006] eKLR and Rakesh Kumar Anand vs Dipak Kumar Anand [2006] eKLR.**

10. That in the case of **Kenya Industrial Estates Ltd vs Anne Chepsiror & 5 Others [2015] eKLR**, the judge had considered the procedure that follows upon the expiry of lease before the coming into effect of the Land Act to the effect that a person whose lease has expired can have legitimate expectation for its renewal if he has complied fully, meaning having developed the plot substantially, with the special conditions set therein. That in the present case, the Respondent had not developed the plot.

11. That from the proceedings, it was clear that the Respondent had bought the plot for speculative purposes and therefore once the lease expired, the Commissioner of Land could deal with it as stipulated under Section 9 of the Government Lands Act. That without development of the plot, there could be no legitimate expectation that the lease could be renewed to the Respondent. The trial magistrate's judgment was therefore in excess of jurisdiction.

12. It was further the Appellant's submission that evidence of land officers could not supersede the provisions of the law. That once the lease expired, the provisions of Sections 9, 12, 13 and 14 of the Government Land act came into play. That an application for extension of a lease could not act as the extension of the lease. The Appellant prayed that the Appeal be allowed.

Respondent's Submissions

13. The Appeal was opposed by the Respondents who submitted through his written submissions that although the Appellant had pleaded that the suit was filed out of time and no leave was sought for extension of time, yet the Appellant in his defence dated the 6th February 2002, did not specifically plead any statute of limitation or the Government Lands Act (now repealed). He could not now rely on the said statute or the Statute of limitation to support this line of argument.

14. That further, the Respondent's suit in the trial court was not filed to challenge any act done under the Government Land Act or for an action for something or anything done under the Government Land Act (repealed) for the Appellant to invoke the provisions of Section 136 of the said Act.

15. That it was not in dispute that the lease for plot No. Nyandarua/Gathanje/65 was for 33 years with effect from the 1st March 1971 which term expired on the 1st March 2004. But that prior to the expiry date of the lease, the Respondent had applied for extension of the same pending which he had also filed suit in the trial Magistrate's Court which suit had been heard and determination.

16. That there had been no evidence adduced at the trial court proving that someone else had been granted the leasehold title at the expiry of the lease held by the Respondent. There had also been no evidence to show that the application for extension of the lease had been rejected to the effect that the same was still pending before the National Lands Commission. That the provisions of the Land Act were now applicable on the renewal of the lease to the suit land and should apply to determine whether or not the Respondent's expired lease over the suit land should be applied or not.

17. That the Appellant had never been granted lease to the suit land as no evidence had been tendered to prove that the provisions of Section 9, 12, and 13 of the Government Land Act had been followed to grant the leasehold title to the Appellant or anybody else.

18. The Respondent relied on the provisions of Section 13(1) of the Land Act and the decided case of **Rentone Holdings Company Limited vs Mashukur Enterprises Limited & Another [2017] eKLR** to submit that he had the pre-emptive right for renewal of his lease and as a previous holder of the lease therefore, he had the first right of priority over its renewal.

19. That based on the principle of legitimate expectation, the Respondent as the holder of the expired lease in respect to the suit plot had a legitimate expectation that his expired lease will be renewed to him. He relied on the decided Ugandan case of **Alex Agandru vs Etoma Francis (Uganda High Court sitting at Arua in Civil Suit No. 0007 of 2011)**

20. Further submission was that it was not in contention that the Appellant had built a permanent building on the suit land, to this effect

therefore it could not be said that the Respondent had not complied with the terms of the lease in respect to developing the suit land since the Appellant had already taken possession of the same and had developed it hence constructively denying the Respondent possession an actual possession of the suit land although he had been paying rates and land rent.

21. It was the Respondent's further submission that from the evidence on record there were two distinct parcels of plots at Githanje Center which bore the same number 65. That whereas one of the plots was a surveyed parcel of land, the other was un-surveyed. That from the evidence adduced by PW2 and PW4, the plot number 65 situate at Gathanje and which the Appellant lay claim to, was different from the present suit land being plot No. Nyandarua /Gathanje Township/65 to which he had never been issued with a lease. He thus prayed for the Appeal to be dismissed.

Analyses and Determination

22. I have considered the record, the judgment by the trial Magistrate, the submissions by learned counsel, the authorities cited on behalf of the respective parties and the law. Conscious of my duty as the first appellate Court in this matter, I have to reconsider the evidence, assess it and make my own conclusions on the evidence, subject to the cardinal fact that I did not have the advantage singularly enjoyed by the trial magistrate, of seeing and hearing the witnesses as they testified. (*See Seascapes Ltd v. Development Finance Company of Kenya Ltd [2009] KLR, 384*). I also remind myself that this Court will not normally interfere with a finding of fact by the trial court unless it is based on no evidence or on a misapprehension of the evidence or the magistrate is shown demonstrably to have acted on wrong principle in reaching the findings he did. (*See Ephantus Mwangi & Another v Duncan Mwangi Wambugu [1982-88] 1 KAR 278*).

23. The basis of the Appellant's claim according to the evidence adduced at the trial court, was that at all material times he was the registered proprietor of plot No. 65 Gathanji having been allotted the same in August 1995. That subsequently he had paid Ksh 8,183/= through a cheque, herein produced as Def exh 1 (d) to the Lands office and was issued with the allotment letter on which was attached the conditions thereto, the Physical Development Plan (PDP) and a sketch Plan of the Plot.

24. He had marked copies of the said documents (the original ones having been stolen from his house during a burglary incidence) as DMFI 1 (a-c). That upon being allotted the plot, he had fulfilled all the conditions thereon and had even developed it by putting up a permanent structure being a house which was converted into a bar, three rooms at the back, two toilets, bathroom and urinal. He had produced the building Plan as Df exh 2.

25. That the Government had subsequently issued notice in the Daily Newspaper of 21st May 2008 herein produced as Df exh 3 to the effect that it would reposing all plots that had not been developed.

26. On cross examination, the Appellant had informed the court that he had neither of the original documents marked for identification because they had been stolen from his house during a breaking and burglary incidence. That he had reported the same to the Ol joro Orok police but he had no police abstract.

27. He testified further that he had been shown the plot by the people from the Municipal Council and that although he had lease to the Plot, he had forgotten it at his home. He also had no the receipts to show that he had been paying rates to the Plot.

28. When pressed by Counsel for the Respondent, the Appellant had confirmed that he had not paid the rates because he had been told by **'the big people who gave him the Plot and who hold this country, not to pay the rates'** as the case was in court. That he was ready to pay the same once the case was over.

29. The Respondent's evidence on the other hand while testifying as PW1, was that he was the lawful proprietor of the suit land being Nyandarua/Gathanji G.T/65 That the same had initially been allotted to one Shipira Wanjiru, vide a lease document produced as Pf exh 1, wherein they had exchanged the same with his shares in Salient farms. That the transfer had been authorized by the Commissioner of lands, through the transfer of lease herein produced as Pf exh 2. That he had then procured a certificate of lease in his name on the 7th January 1976, the certificate which was produced as Pf exh 3.

30. That the lease had been for a period of 33 years with effect from 13th March 1971 and was to lapse on the 1st March 2004. That before the expiry of the said lease, he had applied for its extension but was yet to receive a response from the Commissioner for Lands.

31. That thereafter he had been shown the Plot wherein he continued paying rates to the council. He had produced the receipts as Pf ex 4(a-b). That it had been until the year 1999 when he visited the Plot, only to discover that the Appellant herein had constructed a shop on the same.

32. That he had subsequently written to the Nyandarua County Council vide a letter dated the 4th November 1999, herein produced as Pf exh 5, and another to the Lands officer dated the 10th April 2000, herein produced as Pf exh 6 wherein vide a letter dated the 8th April 2000, herein produced as Pf exh 11, the Land officer had asked the Appellant to cease from developing the suit plot any further or in the alternative, produce documentation of ownership. The Appellant had stopped the construction as directed.

33. That it was later that he had come to discover through a letter dated the 15th June 2007, herein produced as Pf exh 7, and addressed to the Land Officer by Counsel for the Appellant, that the Plot had been allotted to the Appellant on the 24th August 1995 by the Commissioner of Lands for a period of 99 years. He had then conducted a search on the 4th February 2004 which search had confirmed that the plot was still registered in his name.

34. He had confirmed that he had not acquired consent to the transfer of the suit land, which was one in 1976, from the original allottee, Shipira Wanjiru to himself and further, that he had neither occupied the suit land nor developed it but, had paid all the rates.

35. He further confirmed that he had not complied with the conditions in the lease and that before the plot was allocated to the Appellant, there had been no communication from the Commissioner of Land to the effect that none compliance of the conditions would lead to repossessing of the plot. That there had been no notice of surrender of the plot or repossession communicated to him up to the time the matter proceeded for hearing.

36. He further testified that the allocation of the plot to the Appellant herein was irregular and illegal. That he had not renewed any notice for surrender of the plot from the Commissioner of Land.

37. PW 2, the works officer Nyandarua County produced the Physical Development Plan for Gathanje area which was made in December 1965 as Pf exh 8 and testified that the subsequent allocation of the plots had been made in the early 70's by the Commissioner of Land and that the said plot was in a residential cum commercial area.

38. Further testimony was that there were two plots Numbered as No. 65 within Gathanje area which were located 200 meters apart. That at the time, plots had been set aside for the landless people wherein the commissioner of land had allotted several for lease in 1971. He confirmed that the owner of the suit plot as per his records, was the Respondent herein, Mr. Ndungu.

39. He further testified that the allotment letter issued in 1995, had not been accompanied by a Part Development Plan and therefore it did not relate to the suit land in the development plan which only had one plot and which was not viable for allotment in 1995 since the plot had already been allotted to somebody else and the lease had not expired. That the allotment letter of 1995 had therefore referred to the 2nd plot No. 65.

40. PW 3 testified on behalf of the Commissioner of Lands wherein he confirmed that the suit plot was allotted on the 23rd March 1971 to Shipira Wanjiru for a lease of 33 years and was to expire in the year 2004. That subsequently, the plot had been transferred (a lease was transferable) to somebody else.

41. That the lease for Plot No. 65 had been subsequently extended, vide a letter from the Commissioner of Lands dated the 17th July 2000, addressed to both the Town Clerk Nyandarua County, the Physical Planning Officer and copied to Mr. Stephen N. Gichiri, the Respondent herein, after the Respondent had applied for its extension. The letter was produced as Pf exh 10

42. The witness testified that once a lease expired, the owner did not automatically loose the plot and if the same was not extended, forfeiture proceedings would be instituted and the Plot would revert back to the Government.

43. That he was not aware of any forfeiture proceedings regarding the present plot. Further that the suit Plot could not have been allotted to anybody in 1985 and there was no double allocation. That there existed two plots bearing the same number 65 within Gathanje Township but which plots were distinguishable with the face that whereas one was a surveyed plot, the other was an un-surveyed Plot. That the surveyed Plot was the one that had been allotted.

44. The last witness who had testified as PW4, had been the Lands officer in charge of Nyandarua District who had confirmed that indeed after they had received the complaint letter from the Respondent herein, they had written to the Appellant herein vide a letter dated the 10th April 2000, herein produced as Pf exh 6, asking him to stop any further Developments on the suit Plot and /or present documents of ownership.

45. That the Appellant never presented documents proving ownership to their office. He also confirmed that although they had later received a letter from the Appellant's Counsel stating that the suit land belonged to the Appellant, yet the same had not been accompanied with any supporting documents like the letter of allotment. He confirmed that the suit Plot was registered to the Respondent and not the Appellant.

46. He also confirmed that the Physical Development Plan herein produced as Pf exh 8 No. Nya/350/90/15 was prepared in the year 1990 and showed the location of the suit Plot and which was different from the Part Development Plan No. Nya/C1127/95/1, produced as Pf exh 12, which was an area that had been differed for the future and which also contained Plot No. 65, but which Plot was different from the suit Plot No. 65.

47. Like PW3, PW4 confirmed that after an allotte was issued with a lease, they were to develop the Plot within 24 months failure to which they were to write to the Commissioner of Lands giving reasons of their inability to develop the Plot.

48. The witness confirmed that the documents held by the Appellant, DMFI were copies of documents that resembled their documents and further the reference number on the same was in reference to the un-surveyed Residential Plot No. 65 Gathanje Township which was not the same as Pf exh 8 the suit Plot herein.

49. The witness further attacked the documents held by the Appellant to the effect that his letter of allotment herein marked as DMFI 1(b) was not attached to the Physical Development Plan and neither was it signed. That further the payments for the allotted plots was to be made to the Commissioner of Lands within 30 days of allotment, in the present case, the bankers' cheques marked as DMFI (a and d) were paid after 30 days and to the Department of Lands and had no receipts accompanying the payment. He confirmed that the Respondent had applied for an extension of the lease to the Commissioner of Lands and that there had been no double allocation of the suit land.

50. *Considering the evidence adduced in the trial court* the issues raised herein are;

- i. Whether the claim in the trial court was filed out of time.

ii. Whether the Respondent's lease had expired **by effluxion of time**

iii. Who was the legal owner of plot No. Nyandarua /Gathanji G.T/65

51. On the first issue, it is not in dispute that the Respondent was issued with a lease for plot No. Nyandarua/Gathanje/65 for a period of 33 years with effect from the 1st March 1971, which lease term expired on the 1st March 2004.

52. The Appellant's assertion is that since the Respondent's evidence was to the effect that he had discovered that the Appellant had constructed on his land in the year 1999, he (Respondent) ought to have filed his claim within one (1) year after the cause of action arose. Instead, he had filed suit 3 (three) years later which was inconsistent with the provision of Section 136(1) of the Government Land Act. He sought that the Respondent's suit ought therefore to have been declared statute barred.

53. It is not in dispute that the Respondent herein was registered as lessee of the suit plot under the Registered Land Act Cap 300 (now repealed) and issued with a certificates of lease over the suit property on the 7th January 1976.

54. From the above finding, I find that once the Respondent's certificate of lease was issued pursuant to the provisions of the Registered Land Act Cap 300 (now repealed), the said title ceased to be governed by the provisions of The Government Land Act (now repealed) as it had now become private land and was now to be governed by the provisions of the Registered Land Act Cap 300, (repealed) which is now governed by The Land Act, 2012 and the Land Registration Act, 2012.

55. The Land Registration Act, 2012 is very clear on the position of a holder of a title deed in respect of land as envisaged under **Section 26(1) of the Land Registration Act to the effect that:**

“the Certificate of Title issued by the Registrar upon registration, to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of the proprietor shall not be subject to challenge, except –

a. On the ground of fraud or misrepresentation to which the person is proved to be a party

b. Where the Certificate of Title has been acquired illegally un-procedurally or through a corrupt scheme

56. In this regard therefore, the provision that would be applicable on the issues of limitation of time is Section 7 of the Limitation of Actions Act which provides as follows:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person

57. As noted from the evidence on record, a fact which is not disputed, the Respondent herein had discovered that the Appellant had constructed on his land in the year 1999, wherein he had filed suit on the 28th May 2003 about 3 (three) years later, a period which was within the prescribed time limit as per the provisions of Section 7 of the Limitation of Actions Act. To this effect, I find that the suit in the trial Magistrate's Court was therefore not statutorily time barred.

58. On the second issue as to whether the Respondent's lease had expired **by effluxion of time, I find that there is no dispute that** Respondent's lease to the suit land from the Government of Kenya was for a period of a term of 33 years from the year 1971 which lease expired in the year 2004 while the matter was pending in court.

59. There was evidence to the effect that after the expiry of the lease, the Respondent had applied for extension of the same to the Land Commissioner who, vide a letter dated the 17th July 2000, herein produced as Pf exh 10, had addressed both the Town Clerk Nyandarua County, and Physical Planning Officer seeking their comments/recommendation for his necessary action. The letter had also been copied to Mr. Stephen N. Gichiri, the Respondent herein.

60. Although his evidence was not supported by any documentation, PW3 had testified that upon receipt of the letter produces as Pf exh 10, there had been an extension of the lease for Plot No. 65. This evidence however remains just that as by the year 2004, when the lease expired, the Commissioner of Lands had not accorded any approval to the application for extension and/or renewal of the lease to the Respondent.

61. Although no documentary evidence was adduced proving the said extension, yet, the law as set out in Section 13 of the Land Act, 2012, provides as follows :-

Where any land reverts back to the national or county government after expiry of the leasehold tenure the Commission shall offer to the immediate past holder of the leasehold interest pre-emptive rights to allocation of the land provided that such lessee is a Kenya citizen and that the land is not required by the national or the county government for public purposes.

(2) The Commission may make rules for the better carrying out the provisions of this section, and without prejudice to the generality of the foregoing, the rules may provide for the following.

(a) prescribing the procedures for applying for extension of leases before their expiry.

(b) prescribing the factors to be considered by the Commission in determining whether to extend the tenure of the lease or re-allocate the land to the lessee.

(c) the stand premium and or the annual rent to be paid by the lessee in consideration of extension of the lease or re-allocation of the land.

(d) other covenants and conditions to be observed by the lessee.

62. From the wording of the above provisions of the law, the same is clear to the effect that that the previous holder of the lease has the first right of priority over its renewal, so long as the person is a Kenyan citizen and so long as the land is not required for a public purpose. It is therefore not in doubt that the person who was entitled to a renewal of a leasehold that had expired in the first instance, was the Respondent who was the previous holder of the leasehold title and not the Appellant herein.

63. Pursuant to the Gazette Notice No. 5734, published on 9th June 2017, entitled the “*Guidelines for Extension and Renewal of Leases*”, the National Land Commission is required to notify the holder of the expiring leasehold title of his pre-emptive rights to apply for extension of the lease, and if there is no response, the Commission will publish the notice in two newspapers of wide circulation. The court was not provided with any evidence to show that this procedure was followed.

64. According to the evidence on record which as not supported by any documents, the Appellant’s testimony was to the effect that at all material times, he was the registered proprietor of plot No. 65 Gathanji having been allotted the same in August 1995. There was however no letter of offer and acceptance of the allotment, the terms and conditions thereof as well as the payment the date of the offer, adduced as evidence by the Appellant who claimed that the same had been stolen.

65. Clearly, this piece of evidence, the same not having been supported by any documents, but then again even if it was supported, was clear that the purported allotment of the suit land to the Appellant was done before the expiry of the Respondent’s lease meaning that a new allotment and or/lease was granted to the Appellant during the pendency of the Respondent’s lease which in itself is illegal.

66. There was no evidence adduced in court that the suit land had been re-allocated to the Appellant for reasons that it had not been developed or for any other reason, the Respondent ought to have been informed by the Commissioner of Lands that his land had been repossessed for flaunting the conditions of the lease therein or that his application for extension of the lease did not succeed because of failure to develop the land or for any other reason.

67. In the case of **Nelson Kazungu Chai & 9 others vs Pwani University College [2017] eKLR** the court of Appeal held that:

*The doctrine of legitimate expectation is a principle of administrative law which requires that a public authority or administrative body should not renege on legitimate promises which have been made and relied upon to a person’s detriment. As was captured by the House of Lords in the case of **Council of Civil Service Unions & Others v. Minister for the Civil Service [1984] 3 All ER 935;***

“even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the courts will protect his expectation by judicial review as a matter of public law.”

*In order to successfully invoke the doctrine, it must be shown that the act or decision complained of affected such other person either; (a) by altering rights or obligations of that person which are enforceable by or against him in private law or (b) by depriving him of some benefit or advantage which he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do (Per Lord Diplock in **Council of Civil Service***

68. In the present case, I find that although the Respondent’s lease had expired, yet the fact that he had applied for extension of lease, the Commissioner of Lands had a duty to consider his application, make a decision and communicate the said decision to him. Failure to consider the application for extension and respond to the same in whichever way, was in my humble view a breach of rules of natural justice and contravention of the Respondent’s legitimate expectation.

69. It was incumbent on the Commissioner of Lands to either extend or not to extend the Respondents lease and although they are free to change their policy, *the authority is by no means free to ignore the existence of a legitimate expectation” – De Smith, Woolf a Towell (1995), Judicial Review of Administrative Action, 5th Edition, page 563.*

70. I find that the Respondent’s legitimate expectation for extension of lease was not met in the circumstance

71. In the case of **Abdul Waheed Sheikih & Another vs Commissioner of Lands & 3 others [2012] eKLR**, while granting the Plaintiff/Applicants Conservatory Orders restraining the 2nd Defendant from proceeding any further with the proposed tender for the development of a Civil Servants Housing Scheme and/or site and service scheme on the property known as L.R. No.209/193, Pangani, Justice Isaac Lenaola, Judge of the High Court (as he then was) observed that the Respondents had acted completely outside the doctrine of legitimate expectation.

72. In the matter before me, I find that the Appellant’s purported allotment to the suit Plot was obtained un-procedurally as the same was obtained in the year 1995 during the existence of the Respondent’s lease over the suit property. Further, there had been no notice issued to the Respondent by the Commissioner of Lands of the intention to allocate the property to another person.

73. It is also clear from the evidence of PW 2 and PW4 that the Physical Development Plan produced as Pf exh 8 No. Nya/350/90/15 was prepared in the year 1990 and showed the location of the suit Plot which was a surveyed plot. That the same was different from the Part Development Plan No. Nya/C1127/95/1, produced as Pf exh 12, which was an area that had been differed for the future and which also contained Plot No. 65 an un-surveyed Plot. Further that the documents held by the Appellant, which were marked as DMF1 were in reference to the un-surveyed Residential Plot No. 65 Gathanje Township which was not the same as the suit Plot herein.

74. I find that the lease issued to the Respondent having not been cancelled and/or revoked by the Government and further, the Respondent having made an application for renewal of the same, the said application remains valid unless and until a decision is legally made over it and communicated to the Respondent. I, like the trial Magistrate find, that the Respondent herein remains the legal owner of the suit plot No. Nyandarua /Gathanji G.T/65

75. To this effect therefore, I find no merit in the present Appeal which is hereby dismissed with costs to the Respondent.

Dated and delivered at Nyahururu this 18th day of March 2019.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE