



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT (LAND DIVISION)

AT MILIMANI LAW COURTS, NAIROBI
ELC NO. 308 OF 2008

MARGARET W. GATIBARU
MWANGI.....PLAINTIFF

-VERSUS-

JOHNSON MURITHI MWANGI.....1ST
DEFENDANT

NAIROBI CITY COUNTY.....2ND
DEFENDANT

JUDGMENT

A. Background and Pleadings

1. The Plaintiff has vide her Plaint dated 30th June 2008 sued the Defendants seeking the following orders:

a) A declaration that the allotment letter dated 5th October 1995 issued to the 1st Defendant is a nullity and that the Plaintiff is the lawful owner of that parcel of land known as Plot No. A16 Sector 1 Umoja Innercore.

b) An order directed to the 1st and 2nd Defendants to demolish all the illegal structures standing on the Plaintiff's property being Plot No. A16 Sector 1 Umoja Innercore and in default the Plaintiff be at liberty to demolish the said structures at the 1st Defendant's

cost.

c) Cost of the Suit.

The Plaintiff's Case

2. The Plaintiff's case is that she was allocated the suit property in 1979 by the 2nd Defendant and duly paid the requisite stand premium and other charges. She avers that she immediately took possession of the property and has at all material times been the beneficial owner thereof.
3. It is her further case that in or about June 2003, she discovered that the 1st Defendant had encroached onto her plot and commenced construction thereon without any lawful authority. Upon reporting the matter to the 2nd Defendant, investigations allegedly revealed that the suit property had been irregularly and fraudulently allocated to the 1st Defendant in 1995 despite the earlier allocation to the Plaintiff, and that the subsequent allotment was unlawful, null and void.

The 1st Defendant's Case

4. The 1st Defendant filed his Statement of Defence dated 27th October 2023 denying the Plaintiff's claim in its entirety. He disputes that the Plaintiff has any proprietary interest in the suit property and puts her to strict proof thereof.
5. The 1st Defendant asserts that he is the lawful allottee and proprietor of the suit property having been allocated the same by the 2nd Defendant in 1995 after being informed that the plot was available for allocation.

He states that he paid the requisite sums, executed a lease with the 2nd Defendant, and has been in peaceful and uninterrupted possession of the property since the mid-1990s, further denying any allegations of fraud, collusion, or illegality.

The 2nd Defendant's Case

6. The 2nd Defendant filed its Statement of Defence dated 4th March 2024 substantially supporting the Plaintiff's claim. It admits that according to its records, the suit property was duly allocated to the Plaintiff and that there is no evidence of repossession or lawful reallocation of the same at any time.
7. The 2nd Defendant denies ever allocating the suit property to the 1st Defendant and disassociates itself from any alleged collusion or fraud. It maintains that any purported allotment in favour of the 1st Defendant was irregular and unsupported by its official records, and consequently prays that judgment be entered in favour of the Plaintiff as sought in the Plaint.

B. Proceedings and Submissions

8. The matter proceeded for hearing where the parties tendered evidence in support of their respective cases. Upon close of the hearing, the Court directed the parties to file written submissions, which directions were duly complied with by all parties.

a) The Plaintiff's Submissions

9. In her submissions, the Plaintiff identified the following issues for determination: whether her allotment of Plot No. A16 Sector 1 Umoja

Innercore had ever been lawfully revoked; whether the 1st Defendant acquired any valid proprietary interest over the suit property; whether the subsequent allocation in favour of the 1st Defendant was lawful; and whether the 1st Defendant's occupation amounted to trespass.

10. The Plaintiff submitted that her Letter of Allotment dated 8th October 1979 was valid and enforceable, having been accepted through compliance with the stipulated conditions, and that no evidence of revocation was ever produced. She argued that the suit property was therefore not available for reallocation in 1995.
11. In support of this position, she relied on **Joseph N.K. Arap Ng'ok v Justice Moiyo Ole Keiwua & Others, civil Appeal No. 60 of 1997** where the Court of Appeal held that proprietary rights to public land crystallize upon issuance of a valid allotment letter and compliance with its terms. She further cited **Wreck Motor Enterprises v Commissioner of Lands, 1997 eklr** which affirmed that initial rights over public land are conveyed through allotment and not by subsequent instruments.
12. The Plaintiff also relied on the doctrine governing double allocation and urged that where land has been allocated twice, the first in time prevails. In this regard, she cited **M'Akiara M'Rinkanya & Another v Gilbert Kabeere M'Mbijiwe (1982-1988)** and **Chemuttut v E.D. Walker & Others [2023] LEELC 776**, both of which reaffirmed that a prior lawful allotment takes precedence over a subsequent one. She thus urged the Court to declare the later allocation to the 1st Defendant null and void and to grant the reliefs sought in the Plaint.

b) The 1st Defendant's Submissions

13. The 1st Defendant framed the issues for determination as whether the Plaintiff had proved allegations of fraud and trespass to the required legal standard, whether the Plaintiff's 1979 letter constituted a valid and enforceable allotment, and whether the 1st Defendant lawfully acquired rights over the suit property through the 1995 lease.
14. He submitted that allegations of fraud must be specifically pleaded and strictly proved, and cannot be inferred from surrounding circumstances. In support of this position, he relied on **Kuria Kiarie & Others v Sammy Magera [2018] KECA 467 (KLR)** and **Vijay Morjaria v Nansingh Madhusingh Darbar & Another, [2000] eKLR** where courts emphasized that fraud must be distinctly alleged and strictly proved. He further cited **Kinyanjui Kamau v George Kamau**, which reiterated that the standard of proof in fraud claims is higher than that of a balance of probabilities.
15. On the issue of trespass, the 1st Defendant argued that a registered or lawful owner in possession cannot trespass upon his own property, relying on the statutory definition of trespass and principles of lawful possession. He further contended that the Plaintiff's allotment offer lapsed due to non-compliance with payment timelines, leaving the land available for allocation.
16. In the alternative, the 1st Defendant submitted that if the Court were to find that double allocation occurred, the appropriate remedy would be compensation rather than eviction. In this regard, he relied on **Mwangi Mbothu & Others v Gachira Waitimu & Others,(1986) KECA 68 KLR** where the Court recognized the equitable rights of a party in long-term possession and development of land.

C. Analysis and Determination

Having carefully considered the pleadings, the evidence on record, and the written submissions by the parties, the Court finds that the following issues arise for determination:

- a) Whether the Plaintiff was lawfully allocated Plot No. A16 Sector 1 Umoja Innercore and whether that allocation was ever revoked or lapsed in law.
- b) Whether the 1st Defendant acquired any valid proprietary interest over the suit property.
- c) In the event of double allocation, which party holds a superior legal claim and what remedies are available.

Whether the Plaintiff was lawfully allocated the suit property and whether that allocation was ever revoked or lapsed

17. The dispute before this Court concerns competing claims over an unregistered parcel of land emanating from alleged allocations by the same public authority. In matters of this nature, ownership is established by tracing the root of title through allotment documents, payment records, and confirmations by the allocating authority, as opposed to reliance on a land register.
18. The Plaintiff tendered in evidence a Letter of Allotment issued in 1979 in respect of Plot No. A16 Sector 1 Umoja Innercore together with receipts showing compliance with the financial obligations stipulated therein. Crucially, the 2nd Defendant, being the allocating authority, admitted in its Defence that the suit property was allocated to the Plaintiff and that there exists no record of repossession, cancellation, or lawful reallocation of the land at any time.

19. The law on the legal effect of an allotment letter once conditions are met is well settled. The Court in the case of **Rukaya Ali Mohamed v David Gikonyo Nambacha & another (Kisumu HCCA no 9 of 2009)** held that: “Once (an) allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment, since a letter of allotment confers (an) absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation, or that the allotment was out rightly illegal, or it was against the public interest.”
20. I am also guided by the case of **Republic v City Council of Nairobi & 3 Others [2014] eKLR**, where the Court held that: “once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”
21. These principles are further reinforced by statutory provisions governing land administration. Under Section 14 of the Land Act, 2012, allocation of public land must be undertaken lawfully and in accordance with prescribed procedures, while any reallocation presupposes that the initial grant has been lawfully withdrawn or revoked. Equally, Section 26 of the Land Registration Act, 2012 protects interests lawfully acquired unless shown to have been obtained through fraud, illegality, or

procedural impropriety.

22. Applying the above principles to the present case, there is no evidence before this Court that the Plaintiff's allotment was ever revoked, cancelled, or declared void. No notice of revocation was issued, no minutes of cancellation were produced, and no administrative action was demonstrated by the allocating authority to extinguish the Plaintiff's rights. To the contrary, the 2nd Defendant expressly confirmed the subsistence of the Plaintiff's allocation.
23. The argument by the 1st Defendant that the Plaintiff's rights lapsed by passage of time is unsupported in law. An allotment does not lapse automatically in the absence of a lawful revocation by the allocating authority, particularly where the authority continues to recognise the allottee and receives payments relating to the land. The power to revoke lies exclusively with the allocating authority and must be exercised expressly and procedurally.
24. In the circumstances, this Court finds that the Plaintiff lawfully acquired rights over Plot No. A16 Sector 1 Umoja Innercore through the 1979 allotment, duly complied with the conditions thereof, and that the said allotment was never revoked or cancelled in law. Consequently, the suit property was not available for reallocation in 1995 or at any subsequent time.
25. The Court therefore holds that the Plaintiff was the lawful allottee of the suit property and that her allocation remained valid and subsisting at all material times.

Whether the 1st Defendant acquired any valid proprietary interest over the suit property

26. Having found that the Plaintiff's allotment of the suit property remained valid and was never revoked, the next question for determination is whether the 1st Defendant nonetheless acquired any lawful proprietary interest capable of defeating or overriding the Plaintiff's prior rights.
27. The 1st Defendant's claim is founded primarily on a Lease Agreement dated 5th October 1995 and payment receipts allegedly issued by the allocating authority. He contends that he was informed that the suit property was available for allocation and that upon payment of the requisite sums, a lease was executed in his favour.
28. However, it is noteworthy that the 1st Defendant did not produce a Letter of Allotment or any official correspondence evidencing lawful alienation of the suit property to him by the allocating authority. The importance of a Letter of Allotment as the foundational instrument for acquisition of rights over public land cannot be overstated. It is the instrument through which public land is first alienated before any registrable interest may crystallize.
29. In the present case, the absence of a Letter of Allotment in favour of the 1st Defendant is fatal to his claim. A lease or subsequent instrument cannot stand on its own in the absence of a valid initial allocation. Where the root of title is defective, all subsequent interests founded upon it collapse.
30. Further, the 2nd Defendant expressly denied ever allocating the suit property to the 1st Defendant and disowned any lawful process leading to the purported lease. This Court attaches great weight to the position of the allocating authority, being the custodian of land allocation records and procedures.

31. Even assuming, for argument's sake, that a lease was executed, such lease could not confer lawful proprietary rights where the land had already been allocated and not lawfully repossessed. One cannot convey what one no longer has. Once the suit property had been allocated to the Plaintiff and that allocation remained valid, the allocating authority lacked the legal capacity to reallocate or grant any subsequent interest in the same land.
32. The 1st Defendant further relied on long occupation and development of the suit property as a basis for asserting rights. However, possession and development, however extensive, cannot cure an illegality or confer title where none existed in law. Equity cannot be invoked to sanitize an unlawful allocation, particularly where it arises from public land administration.
33. Moreover, the 1st Defendant's allegations of being an innocent purchaser for value cannot stand where the root of title is defective and where the allocating authority itself denies the legality of the allocation. The doctrine of bona fide purchaser does not apply where public land is unlawfully alienated.
34. In light of the foregoing, the Court finds that the 1st Defendant failed to demonstrate any valid proprietary interest in Plot No. A16 Sector 1 Umoja Innercore. The purported lease of 1995, having been issued in respect of land that was not available for allocation, was incapable of conferring lawful rights and is a nullity in law.
35. Accordingly, this Court holds that the 1st Defendant did not lawfully acquire any enforceable proprietary interest over the suit property.

In the event of double allocation, which party holds the superior legal claim and what remedies are available

36. Having established that the Plaintiff's allotment was lawful, valid, and never revoked, and further having found that the 1st Defendant did not acquire any lawful proprietary interest in the suit property, it follows that the circumstances herein amount to an attempted double allocation by the allocating authority. The legal position in cases of double allocation is now well settled.
37. Where land has been allocated twice, the first lawful allocation in time takes precedence provided that the allottee complied with the conditions attached thereto and the allocation was never lawfully cancelled. Any subsequent allocation made in the absence of revocation of the first is void ab initio.
38. In the present case, the Plaintiff's allotment predates the purported allocation to the 1st Defendant by over a decade. The Plaintiff complied with the conditions of the allotment, took possession, and remained recognised by the allocating authority as the lawful allottee. There is no evidence of lawful revocation. The 2nd Defendant itself confirmed that the suit property remained allocated to the Plaintiff in its records.
39. Conversely, the purported allocation to the 1st Defendant occurred at a time when the suit property was not legally available for alienation. The allocating authority therefore acted ultra vires its powers in purporting to grant an interest it no longer had. In such circumstances, the Plaintiff's claim is clearly superior in law.

40. As regards remedies, the primary duty of this Court is to uphold lawful proprietary rights and restore possession to the rightful owner. Where unlawful occupation has occurred pursuant to an invalid allocation, the appropriate remedy is declaratory relief affirming ownership together with orders for removal of illegal structures and restoration of vacant possession.
41. The 1st Defendant urged the Court to consider compensation in lieu of eviction owing to developments undertaken on the suit property. However, compensation cannot override clear proprietary rights where the occupation is founded on an illegality. To allow unlawful occupation to subsist merely because development has taken place would be to sanctify illegal land alienation and undermine the rule of law in land administration.
42. Any claim for compensation arising from the unlawful actions of the allocating authority lies, if at all, against the allocating authority itself and not against the lawful allottee whose rights have been infringed.
43. Accordingly, this Court finds that the Plaintiff holds the superior legal claim to Plot No. A16 Sector 1 Umoja Innercore and is entitled to the reliefs sought in the Plaintiff.

D. Final Determination and Orders

44. Having carefully considered the pleadings filed herein, the evidence adduced by the parties, the written submissions on record, and the applicable principles of law, this Court finds that the Plaintiff has proved her case against the Defendants on a balance of probabilities. The Court is satisfied that the Plaintiff was lawfully allocated Plot No. A16 Sector 1 Umoja Innercore by the allocating authority in 1979 and duly complied

with the conditions attached thereto. The evidence further establishes that the said allotment was never revoked, cancelled, or rendered void in law.

45. The Court further finds that the purported allocation and lease in favour of the 1st Defendant in 1995 was unlawful and incapable of conferring any proprietary interest, the suit property having already been validly allocated and not lawfully repossessed. Consequently, the Plaintiff holds the superior legal claim to the suit property, and the 1st Defendant's continued occupation and construction thereon is unlawful.

46. Accordingly, judgment is hereby entered in favour of the Plaintiff against the Defendants jointly and severally as follows:

- a) A declaration is hereby issued that the allotment letter dated 5th October 1995 issued to the 1st Defendant is null and void and that the Plaintiff is the lawful owner of all that parcel of land known as Plot No. A16 Sector 1 Umoja Innercore.
- b) An order is hereby issued directing the 1st and 2nd Defendants to demolish all illegal structures erected on the Plaintiff's property being Plot No. A16 Sector 1 Umoja Innercore within sixty (60) days from the date hereof.
- c) In default of compliance with Order (2) above, the Plaintiff shall be at liberty to demolish the said structures at the cost of the 1st Defendant.
- d) An order of permanent injunction is hereby issued restraining the 1st Defendant, his agents, servants, or any person claiming through him from entering upon, remaining on, constructing upon,

or in any manner interfering with the Plaintiff's quiet possession of the suit property.

e) The Defendants shall bear the costs of the suit, jointly and severally.

It is so ordered!

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on 16TH day of **FEBRUARY, 2026.**

MOHAMMED N. KULLOW
JUDGE

Judgment delivered in the presence of: -

Mr. Njeru..... for the Plaintiff

N/A..... for the Defendants

Philomena W...... Court Assistant