



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC PETITION NO. 17 OF 2015

CHRISTOPHER KURUTYON LONYALA.....PETITIONER

VERSUS

COUNTY GOVERNMENT OF WEST POKOT.....RESPONDENT

JUDGMENT

Introduction

1. **Christopher Kurutyon Lonyala**, the petitioner herein filed the petition dated **5th August, 2015** and filed in court on **1st September, 2015**. The petitioner seeks the following orders:-

- (a) **A declaration that land plot number “D” in Kapenguria within West Pokot County is duly owned by the petitioner as the bona fide legal allottee thereof.**
- (b) **A permanent order of injunction be issued to restrain the respondent from carrying out its intended project to construct the Governor’s Residence, West Pokot on the petitioner’s legally allotted land plot number “D” in Kapenguria, within West Pokot County.**
- (c) **Costs of this petition.**

Background facts and the Petitioner’s Case

2. The petitioner’s case may be gathered from the petition as well as the affidavit sworn in support of the petition on **5th August, 2015**. The petitioner avers that on **17th June, 1999** he applied for and was successfully allotted plot number **“D”** in Kapenguria by the Municipal Council of Kapenguria (now defunct) and went ahead to annex copies of minutes of the defunct County Council, copy of Letter of Allotment as well as an extract from the Daily Nation Newspaper of **26th March, 1999** depicting an announcement of the part development plans for the area and calling for objections.

3. The petitioner states that he paid all the requisite fees to the defunct Council but could not immediately get possession and construct the plot within the two years period as required due to the fact that there was a temporary/mobile house unit for Survey Personnel who denied him access and that despite several attempts to have the said house removed from the land proved futile.

4. The petitioner states that on **13th March, 2015** he was surprised to come across a Tender Invitation Notice in the Standard Newspaper inviting applications for amongst others, tender to construct West Pokot County Governor’s residence within plot number **“D”** in total contravention of the petitioner’s right to property. The petitioner further states that the act by the respondent is in total contravention of the widely publicized moratorium in force pursuant to **Section 35 of the Transition to Devolved Government Act, 2012** on transfer of assets and liabilities during the transition period and before the Transition Authority finalizes on the verification and final audit of assets of defunct County Councils, and determines any claims and/or complaints on the assets thereof. The petitioner contends that the intended project by the respondent has been conducted without public participation contrary to the express constitutional requirements. The petitioner therefore contends that the respondent is threatening to deny, violate and infringe on his fundamental rights as enshrined in the Constitution.

Respondent’s Case

5. The respondent filed a replying affidavit sworn by **Mathew Rionokal Limariono** on **15th February, 2016**. It is the respondent’s case that the West Pokot County Governor’s Residence has been fully renovated and other construction is underway on parcel of land known as **West Pokot/Siyoi ‘A’/55** registered in the name of the Pokot County Council. That a perimeter wall has been completed and construction has been going on for over **1 ½** years and that no individual has ever raised any complaint in regard to that parcel of land. That the respondent has never received any correspondence from either the petitioner or the Transition Authority.

6. The respondent avers that the defunct Municipal Council of Kapenguria and the County Council of West Pokot were two distinct bodies and the then Municipal Council of Kapenguria could not purport to allocate land which belonged to a different entity and any such transaction was illegal and a nullity. The respondent further contends that even assuming the allocation to the petitioner was legal, the petitioner ought to have applied to the then Commissioner of Lands for an Allotment Letter to be issued, the parcel surveyed, Part Development Plan approved by the Department of Physical Planning, obtain a lease document from the Lands Department, Nairobi and finally obtain a Certificate of Lease from the relevant District Land Registry. It is the respondent's contention that it has never deprived the petitioner any parcel of land nor violated his rights to own and enjoy property as the construction of the Governor's Residence is on land parcel No. West Pokot/Siyoi 'A'/55 which was never owned by the defunct Kapenguria Municipal Council. The respondent has attached a copy of certificate of official search showing the proprietor of Title No. West Pokot/Siyoi 'A'/55 as Pokot County Council, and photographs of the constructions already undertaken. The respondent prayed for the petition to be dismissed with costs.

Submissions

7. The petition was canvassed by way of written submissions which were duly filed by both parties. In his submissions, the petitioner reiterated the contents of the petition and the supporting affidavit. Ms. Arunga, counsel for the petitioner submitted that the petition is merited and urged the court to allow the same.

8. On his part, Mr. Barongo, counsel for the respondent submitted that there exist some inconsistencies in the petitioner's claims, pointing out that whereas the petitioner alleges he was allocated plot number "D", the receipts provided indicates that he paid for plot number "A"/2'. Counsel further submitted that if the Municipal Council of Kapenguria allocated the plot to the petitioner, the same was ultra vires and therefore null and void. It is further submitted that the petitioner did not obtain and has not provided the relevant documents from the relevant lands offices. It was the respondent's submission that the petitioner has failed to prove his case on a balance of probabilities, hence the same should be dismissed.

Determination

9. I have considered the petition, the response as well as submissions by both parties. In this case, the petitioner states that he was allocated plot number "D". He has attached a letter dated 26th May, 2000 by the Kapenguria Municipal Council indicating that the petitioner was allocated plot number "D". The respondent in its response has availed a copy of Certificate of Official Search indicating that the proprietor of the parcel of land known as West Pokot/Siyoi 'A'/55 is Pokot County Council. The court will take it that the parties are referring to one parcel of land but with different numbers, reason why this matter is currently before court. The questions that are therefore for determination before this court would be:

(i) **Who is the rightful allottee of the suit land?**

(ii) **Is the petitioner entitled to the orders sought**

(iii) **Who should bear the costs of the suit?**

10. On the first issue, I do note that the petitioner has produced documentary evidence that he was allocated plot number "D". Indeed the petitioner has annexed a copy of a Letter of Allotment for plot number "D". I do note however that the said Letter of Allotment expressly required the petitioner to meet certain conditions. I do note that clause 9 of the said Letter of Allotment expressly provides:

"9. You should construct your plot within two years from the date of pegging, failure to do so will result in your plot being repossessed by the Council."

11. The reason advanced by the petitioner for failure to build on the suit land within the stipulated period of two years is because within the suit land, there stood a temporary/mobile house unit for the survey personnel. There is no evidence by the petitioner showing that the petitioner made efforts to carry out any construction on the plot within two years. There is also no evidence showing that the petitioner made any efforts, if at all to demolish the said temporary structures in order to put up his. Indeed, there is no evidence showing that the petitioner ever took over possession of the plot since the time the same was allocated to him. I find that the petitioner was awakened to his rights if any, by the construction activities of the respondent spurring him to institute this petition. The petitioner may have paid the requisite fees for the allotment. However, there is no indication that he complied with the other conditions. The petitioner does not indicate whether or not he has been paying the requisite land rates. I am persuaded by the decision of the court in the case of **Stephen Mburu & 4 Others -vs- Comat Merchants Ltd & Another [2012] eKLR** where Kimondo J held that:

"...from a legal standpoint, a letter of allotment is not a title to property. It is a transient and (is) often a right or offer to take property."

12. The respondent has provided an official Search which indicates that the proprietor of the land it is carrying out construction of its Governor's Residence is West Pokot County Council. It may well turn out that the plot that the petitioner is claiming belonged to a different entity and not the one that purported to allocate the same to him.

13. From the material placed before the court and on the basis of the evidence adduced, I do find that the petitioner is not entitled to the reliefs sought. The upshot therefore is that this petition is without merit and the same is dismissed with costs.

14. Considering the circumstances of this case, I order that each party shall bear own costs.

Dated, signed and delivered at Kitale on this 15th day of July, 2019.

C. K. YANO

JUDGE

15/7/2019

Coram:

Before - C. K. Yano, Judge

Court Assistant - Collins

ORDER

Judgment delivered in open court in the absence of all the parties.

C. K. YANO

JUDGE

15/7/2019