



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
LAND CASE NO. 138 OF 2000

STEPHEN NYAPARA.....1ST PLAINTIFF
ABSALOM SIMOTWO.....2ND PLAINTIFF
PAUL KIBOI3RD PLAINTIFF

VERSUS

PROVINCIAL DIRECTOR OF SETTLEMENT.....1ST DEFENDANT
RICHARD NGEIYWA.....2ND DEFENDANT
HENRY NDIEMA.....3RD DEFENDANT
MR. TOWETT.....4TH DEFENDANT
THE ATTORNEY GENERAL.....5TH DEFENDANT

JUDGMENT

1. The plaintiffs filed a plaint dated **30/10/2000** which they later amended on **22/7/2003**. In their amended plaint they sought the following orders against the defendants jointly and severally:-

- (a) An order that the plaintiffs are bona fide allottees of 168 acres of LR No. 2070/R Trans Nzoia District and on Kitalale Settlement Scheme and are entitled to remain thereon.
- (b) A temporary injunction restraining the defendants from re-allocating the plaintiffs land from demolishing, trespassing and/or evicting the plaintiffs pending hearing and determination of this suit.
- (d) Costs of this suit.
- (e) Interest at court rates.

The Plaintiff

2. According to the amended plaint, the plaintiffs are the allottees of **168 acres** being part of **LR No. 2070/R Kitalale Settlement Scheme Trans-Nzoia District** having been issued with allotment letters by Government of Kenya; that they have settled on their respective parcels of land and carried substantial developments thereon; that they have been in occupation of the suit land for many years; that after they were allocated the land the 1st defendant caused subdivision of the main parcel and a map was prepared; that however despite all mandatory procedures having been complied with the 1st defendant has purported to cancel the allocation of lands to the plaintiffs has purported to arbitrarily issue new letters of allotments to other persons without notice to the plaintiffs which action the plaintiffs terms as illegal since the plaintiffs are the rightful allottees. It is alleged that the 2nd, 3rd and 4th defendant are being used by the 1st defendant to carry out acts of demolition, unlawful eviction and the trespass upon the plaintiffs' land.

The Defence

3. The 1st to 4th defendants filed their defence on **15/12/2000**. They stated that the plaintiffs are not entitled to the prayers sought; that Civil Procedure Rules have not been complied with; that the **Section 12, 13 and 13(A)** of the Government Proceedings Act have not been complied with; that the suit offends provisions of **Section 16** of the Government Proceedings Act and that it does not meet the requirements of **Order 39** of the Civil Procedure Rules. It is also averred that the plaintiffs have no contractual obligations with the government over the land in dispute and that they have no *locus standi*.

4. On **27/2/2002** **36** applicants were enjoined as defendants into this suit by consent of the parties. However the pleadings were not amended to reflect the inclusion of or the identity of the additional defendants up to the end of these proceedings. However the 36 defendants appear to have filed their defence on **15/3/2002**. In that defence they claimed that they were the lawful allottees of the land, having been allotted the same by the Government of Kenya through the 1st defendant. They averred that the plaintiffs have no recognizable proprietary rights that can be enforced over the suit land. They prayed that the plaintiffs' suit be dismissed with costs.

The Plaintiffs' Evidence

5. The hearing of this suit commenced on **4/10/2018** when **PW1, Stephen Nyapara**, the **1st plaintiff** testified. His evidence is that he lives at Kitalale; that he testifies on behalf of 35 plaintiffs; that in **1998** they were given letters of allotment by the Nakuru Settlement Office after being registered as squatters; that PW1 was allocated **8 acres** which is **Plot No. 12 in Phase 3**; that his letter of allotment (**P. Exhibit 2**) is signed by S.K. Mwaita the then Provincial Land Adjudication Officer. He also produced **10** other letters of allotment in the names of some of his colleagues. He stated that they had been allocated **168 acres** in **LR No. 2070/R** and they had been in occupation thereof since the year **2000**; that a surveyor took them to the suit land; that in the year 2000 another group came and their coming resulted in the filing of this suit. In the year 2001 it was agreed that *status quo* be maintained and in year **2002** another consent order allowed to stay on the land until the end of this suit. Both orders were produced as **P. Exhibit 12** and **13** respectively. That notwithstanding, in **2002** some uniformed people and some civilians attacked the plaintiffs at night. The uniformed are said to have been members of the police force. The civilians are said to have had letters of allocation which superseded the plaintiffs'; the plaintiffs' houses were all demolished and burnt and the new group entered the land and they are still in occupation thereof while some of the plaintiffs live at the market and others with their relatives. The plaintiffs have never been offered alternative land to date despite overtures by the defendants of an amicable settlement to this dispute.

6. PW1 maintained that the plaintiffs' letters of allotment have never been cancelled or declared as forgeries and they were not notified that other people would be settled on their land. He maintained that they are the bona fide allottees of the suit land.

7. On cross-examination by Ms. Lungu for the defendants he stated that he had brought the suit on behalf of the **34** persons some of whom have already died. He admitted that at least 2 of those, Luka and Daniel were deceased. He admitted that his colleagues never gave him authority to file the suit and that

they only compiled a list and gave it to the plaintiffs' advocates, a statement that he withdrew just as casually in the re-examination. He admitted that some allottees names were not put into the list since they could not pay the advocates' fees. He stated that upon allocation the surveyor showed the allottees the land after which each person fenced their portion. He maintained that no money was payable and no person has ever been issued with title to his portion.

8. On re-examination by Ms. Arunga he reversed his earlier statement and stated that he has not brought the suit on behalf of the other plaintiffs and he was merely the 1st plaintiff.

9. The plaintiffs closed their case after PW1 completed giving his evidence.

The Defendants' Evidence

10. **DW1, Crecencia Atieno Nyanga** testified on **24/9/2019**. Her evidence is that she is a Land Adjudication and Settlement Officer in the Ministry of Lands in the National Government. She set out the procedure to be followed when the government is allocating land in a settlement scheme.

11. Upon cross-examination by Ms. Arunga for the plaintiffs she indicated that she was not aware that the plaintiff had taken possession of any land. She also maintained that people who were in the category of the plaintiffs, that is, those who had the old letters issued by the Provincial Administration were issued with fresh letters by the Director of Land Adjudication and Settlement only if the letters they held were found to have been genuinely issued by the Provincial Administration. She maintained that Kitalale Settlement Scheme is forest land which has not been degazetted. She denied knowledge of eviction of the plaintiffs while the suit was still pending. Upon the giving of evidence by DW1, the defendants closed their case and the court ordered the parties to file their respective submissions.

12. The plaintiffs filed their submissions on **29/10/2019** while the defendants filed theirs on **21/11/2019**. I have considered the pleadings and the evidence of the parties and the submissions of the defence in this case.

Determination

Issues for Determination

The main issue that arises for determination in this matter is simply whether the plaintiffs are the rightful allottees of the suit land.

13. It must be recalled that the backbone of the plaintiffs' case is that despite all mandatory land allocation procedures having been complied with the 1st respondent purported to cancel the allocations of the suit land to the plaintiffs and to issue new letters of allotment to third parties without notice to the plaintiffs and that the third parties have been put into possession of the suit land.

14. However, in this case, it is evident from the evidence of the parties that the plaintiffs were issued with letters of allotment by someone other than the Director of Land Adjudication and Settlement, and that the right procedure was not followed in the issuance of those letters.

15. I have examined the letters of allotment produced as **P. Exhibit 2-11**. They are purportedly signed by one S.K. Mwaita, who is expressed to be the Provincial Land Adjudication and Settlement Officer.

16. The proper procedure for the issuance of letters of offer and the allocation of portions of land in a settlement scheme have been described by DW1 who is an officer working in the office of the Director of Land Adjudication and Settlement, Kitale office.

17. **DW1** stated that first, there has to be available land. Secondly the applicants must apply to the Ministry to be allocated land; thereafter the applicants are taken through the vetting process through the verification committee; then the list prepared by the verification committee is taken to the District Plot

Selection Committee which scrutinizes the list and confirms those eligible to be allocated plots; then a letter is written to the Director of Land Adjudication annexing the list for further verification; thereafter the Director forwards the list to the Minister through the Permanent Secretary and the Permanent Secretary considers it and then returns it to the Director who then makes an offer of land to the settlers; the letters of offer are sent to the District Land Adjudication and Settlement Officer to forward to the successful applicants; those letters contain details as to size of the land allocated, amount of money to be paid by the applicants and are copied to the District Commissioner, the Principal Secretary Ministry of Lands and the Land Registrar; upon receiving letters of allotment the allottees are shown the land which by then has been already been surveyed; if the allottees accept the offer they pay 10% of the land value or pay for outright purchase of the land; once the land maps are registered the allottees are issued with discharge of charge and they get titles and they own the land.

18. According to DW1, **P. Exhibit 4** is not a genuine letter of allotment; she highlighted some missing features on that document such as failure to copy the same to the District Land Adjudication Officer and failure to indicate payments or other conditions. She maintained that that letter did not originate from the office of the Director of Land Adjudication and Settlement.

19. DW1 maintained that the Kitalale Scheme was established in **1994**; that too many participants were involved and the process thus became irregular; that the then Provincial Administration claimed to have authority to allocate land; that in **1999** letters issued by the Provincial Administration were cancelled and those who had been vetted and found to have genuine letters issued by the Provincial Administration were given new letters of allotment between year **2002** and **2002**. She denied that **P. Exhibit 1** originated from the Office of Director of Land and Adjudication and Settlement. Singling out the 1st plaintiff, she maintained that he was not a landless Kenyan because he had already been issued with Plot **No. 484 Kitalale Settlement Scheme Phase 11**. From this the witness concluded that even the other plaintiffs may not be genuinely landless Kenyans.

20. In my view the defendants effectively countered the claim by the plaintiffs. None of the plaintiffs rose to provide any evidence that would controvert that of DW1. The 1st plaintiff in particular did not present any evidence to counter DW1's allegation that he had been allocated land in Kitalale Phase 2 whose particulars were expressly provided by DW1 in her oral evidence.

21. The proper procedure to be followed in any government office should be adhered to unless a good explanation can be offered by the persons in breach of that procedure otherwise there would be chaos in the provision of services by the government; this is all the more important in matters land, as it is an emotive subject in this country.

22. In the current suit evidence has been led that the persons who purported to hold letters of allotment from the Provincial Administration were vetted and those who held genuine letters were given replacements of those letters by the settlement office and allocated land. The plaintiffs did not provide any evidence as to whether they were vetted out of that list of claimants. However the evidence of DW1 is telling; she doubts the authenticity of the letters of allocation produced by the plaintiffs; it is certain that if the plaintiffs were so vetted out they are withholding that information or evidence possibly for fear of prejudicing their current claim. DW1 states expressly that those letters did not emanate from the office of the Director of Settlement. The plaintiffs themselves do not expressly controvert that fact. Indeed the person that they have enjoined in this suit is the Provincial Director of Settlement and not the Director of Land Adjudication and Settlement, the latter which is in charge of all matters settlement nationally.

23. Presumably all the letters of allotment produced by the plaintiffs cannot, based on DW1's evidence, be genuine letters of allotment as they have not met the validity criteria that she has set out.

24. I have no reason to doubt the truthfulness of the evidence of DW1.

25. I find that the plaintiffs had not been allocated the suit land in the proper manner and that later when the office that was properly charged with the mandate of settlement came to the scene, the plaintiffs never succeeded in having their letters of allocation verified as genuine and therefore they could not get land

like those who successfully passed through the vetting exercise.

26. In addition the land that the plaintiffs had purported to occupy on the strength of the doubtful letters of allotment was by some means taken away from them and redistributed to other persons who were verified by the settlement office and now the very land claimed by the plaintiffs is not available for allocation.

27. Further, even if this court had been persuaded that the letters the plaintiffs hold are genuine, it is clear from the evidence herein that there are other persons in occupation of the land who have not been enjoined in this suit, or against each of whom the claim of the plaintiffs has not been sufficiently established and it would not therefore be safe to issue the orders sought in this suit.

28. For the foregoing reasons this court is unable to agree with the plaintiffs that they are the bona fide allottees of **168 acres** of land on **LR No. 2070/R Kitalale Settlement Scheme**. Besides, their leader, the 1st plaintiff having been demonstrated to have already been allocated land elsewhere, a great deal of doubt is cast on the rest of the plaintiffs as to whether they are also not mere opportunists out to get land while they are not destitute.

29. The upshot of the foregoing is that the plaintiffs' suit has no merit. The plaintiffs have failed to establish their claim on a balance of probabilities and I hereby dismiss their suit with no orders as to costs.

Dated, signed and delivered at Kitalale on this 11th day of December, 2019.

MWANGI NJOROGE

JUDGE

11/12/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Collins

Ms. Lungu for the defendants

Ms. Arunga for the plaintiffs

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

11/12/2019.