



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 304 OF 2017

CHARLES MWANGI1ST PLAINTIFF

JANET CHEBET.....2ND PLAINTIFF

JAMES KIMETTO3RD PLAINTIFF

SIMON KIMUTAI4TH PLAINTIFF

VERSUS

ZHUOHENG BUILDING LTD.....1ST DEFENDANT

P.K. KAHUHO.....2ND DEFENDANT

CHIEF LAND REGISTRAR.....3RD DEFENDANT

DIRECTOR OF SURVEY.....4TH DEFENDANT

ATTORNEY GENERAL.....5TH DEFENDANT

NATIONAL LAND COMMISSION.....6TH DEFENDANT

BONIFACE W. WAHOME WANJAU.....7TH DEFENDANT

ROBERT MATEL MAINGI NGILA.....8TH DEFENDANT

FRANCIS RUKUNGU MWANGI.....9TH DEFENDANT

ANNE WANGUI RUKUNGU.....10TH DEFENDANT

ALOIS MURIITHI NGURE.....11TH DEFENDANT

KENNETH SALIM LUKALE.....12TH DEFENDANT

DENNITAH GHATI.....13TH DEFENDANT

PATRICIA AKINYI ONDOLO.....14TH DEFENDANT

BETHWEL ODHIAMBO OPIL.....15TH DEFENDANT

ANASTACIA IKUU NZUKI.....16TH DEFENDANT

CHRISTOPHER NZUKI NDUTI.....17TH DEFENDANT

JOSKI AUTO AGENCIES LIMITED.....	18 TH DEFENDANT
FAITH JAMILA NTHENGE.....	19 TH DEFENDANT
WASIKE MAAKA WELLINGTON.....	20 TH DEFENDANT
EMILY MINYOSO ONZERE.....	21 ST DEFENDANT
MAURICE ONZERE ALAS.....	22 ND DEFENDANT
JOHNSON HENRY RANDU.....	23 RD DEFENDANT
RICHARD KIMUTAI KILEL.....	24 TH DEFENDANT
BONIFACE KITHINJI KIOME.....	25 TH DEFENDANT
ROBERT ONYANGO KUNGU.....	26 TH DEFENDANT
VALENTINE SHIKUNDI KEMBO.....	27 TH DEFENDANT

JUDGMENT

1. This suit was commenced by way of a Plaint dated 13th July, 2017. In the Plaint, the Plaintiff averred that he is the original allottee of land known as unsurveyed plot number 50 Athi River; that the land was later surveyed and was registered as Deed Plan number 274589, land parcel number 337/3742, Mavoko (*the suit land*) and that the 2nd Defendant fraudulently caused to be issued a duplicate Deed Plan in favour of the 1st Defendant in respect to the suit land.
2. The Plaintiff averred in the Plaint that the letter of allotment that was issued to the 1st Defendant vide the 2nd Defendant's influence was a nullity *ab initio* and that an order should issue revoking the title that was issued to the 1st Defendant for L.R. No. 337/3742.
3. Upon being served with the Plaint, the 1st Defendant filed an Application seeking to enjoin the 2nd to 4th Plaintiffs and the 3rd to 27th Defendants in the suit. The said Application was allowed by the court on 7th November, 2017.
4. In its Defence, the 1st Defendant stated that the suit is *res judicata*, the same having been adjudicated upon by the National Land Commission in the year 2014; that if the Plaintiffs were given a letter of allotment dated 4th February, 1999 as alleged, the offer lapsed for failure to comply with the conditions therein and that since the 1st Defendant was issued with a Certificate of Title on 19th April, 2012, the same defeated the equitable interest of the Plaintiffs.
5. The 1st Defendant further averred in its Defence that the grant that was issued to the 1st Defendant by the government embodies a contract which is binding to both the 1st Defendant and the State and that the 1st Defendant is a bona fide purchaser of the suit property without notice of the interest of the Plaintiffs.
6. The 1st Defendant finally deponed that after purchasing the suit land, it developed 39 residential houses on the land and one commercial unit and that he has sold the said houses to the 7th to 27th Defendants who now live in those houses.
7. According to the 1st Defendant, the National Land Commission has since determined that he is the owner of the suit property and that the Plaintiffs should be dismissed. In the Counter-claim, the 1st Defendant has sought for the following orders: a declaration that the purported letter of allotment issued to the Plaintiffs is null and void; an order that the Plaintiffs compensates the 1st Defendant for the loss suffered; a declaration that the 1st Defendant is the lawful owner of L.R. No. 337/3742, a permanent injunction and the costs of the suit.
8. When this matter came up for hearing, neither the Plaintiffs nor their advocate was in court. The Plaintiffs' suit was dismissed by the court with costs and the 1st Defendant proceeded to prosecute the Counter-claim.

The Defendants' case:

9. The 1st Defendant's Director, DW1, informed the court that the 1st Defendant is a company engaged in the business of real estate development; that he had the authority of the 7th to 27th Defendants to plead and defend the suit and that the 1st Defendant was incorporated on 7th July, 2006.
10. It was the evidence of DW1 that the 1st Defendant is the registered proprietor of L.R. No. 337/3742 Mavoko, on which stands 39 housing units and one commercial building and that of the 39 residential houses, 18 have been sold to persons who occupy them while 21 are let to tenants by the 1st Defendant.

11. According to DW1, the 1st Defendant was issued with a grant by the government on 19th April, 2012 after accepting the terms and conditions in the letter of offer dated 20th January, 2011.

12. Before being given the letter of offer, DW1 stated that one Emily Musonye Esegeri and Aida Kagendo, who purported to be the owners of the land, sold to him the land. However, he later on discovered that the purported Vendors did not have a title to the land and the sale fell through. That is when the 1st Defendant applied to be allocated the same land.

13. It was the evidence of DW1 that in April, 2014, the 1st Plaintiff started using the criminal process to compel the 1st Defendant to surrender the suit property to him; that his complaint were investigated and rejected by the police and that when he lodged a complaint before the National Land Commission, the complaint was dismissed. According to DW1, the Counter-claim should be allowed.

14. The 1st Defendant, through DW1, produced in evidence the Grant issued on 19th April, 2012; the letter of allotment issued by the Commissioner of Lands dated 20th January, 2011; the approvals by NEMA; the transfer documents; the letter by the National Land Commission dated 26th November, 2016, amongst other documents.

15. In his submissions, the 1st Defendant's advocate stated that the 1st Defendant will only be seeking prayer numbers 1, 3, 4 and 5 of the Counter-claim; that the filing of the suit by the Plaintiffs constituted a third attempt by the 1st Plaintiff to interfere with the 1st Defendant's title and occupation of the suit land; that the National Land Commission investigated the Plaintiffs' claim in respect of the suit land and dismissed it and that the 1st Defendant has proved that it is the one entitled to the suit land. Counsel relied on numerous authorities which I have considered.

16. The evidence before me shows that the 1st Defendant was issued with a letter of allotment dated 20th January, 2011 by the Commissioner of Lands. On 8th February, 2012, the 1st Defendant's advocate forwarded to the Commissioner of Lands a banker's cheque for Kshs. 203, 150 being payment for the money demanded in the letter of allotment. The 1st Defendant was issued with an official receipt by the Commissioner of Lands on 27th February, 2012.

17. It would appear that by the time the Letter of Allotment was being issued to the 1st Defendant, the suit land had already been surveyed and given reference number being L.R. No. 337/3742. After the payment of the requisite fees, the government issued to the 1st Defendant a grant for L.R. No. 337/3742 on 19th April, 2012. The said grant was registered as I.R. No. 135675 on 20th April, 2012.

18. The evidence before me shows that the 1st Defendant is in possession of the suit land and has constructed 39 maisonettes on the land. According to DW1, he has since rented out 18 houses and sold the remaining ones to the 7th to 27th Defendants.

19. The 1st Defendant's director produced in evidence a letter from the National Land Commission dated 26th November, 2014. According to the said letter, the 1st Plaintiff did not satisfy the National Land Commission that he is entitled to the suit land.

20. The Counter-claim by the 1st Defendant is undefended. Indeed, the Plaintiff neither filed a Defence to the Counter-claim nor produced any evidence to counter the Defendants' documents and testimony.

21. Section 26(1) of the Land Registration Act provides that a Certificate of Title issued by the Registrar upon registration 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. The said Section provides that such a title can only be challenged on the ground of fraud or misrepresentation to which the person is proved to be a party; or where the Certificate of Title has been acquired illegally, unprocedurally or through a corrupt scheme.

22. The Plaintiffs have not shown by way of evidence that the 1st Defendant's title was procured fraudulently or by misrepresentation. Indeed, there is no evidence that the said title was acquired illegally, unprocedurally or through a corrupt scheme.

23. Considering that the 1st Defendant is in possession of a grant that was issued pursuant to the provisions of the Land Registration Act, and in the absence of evidence that the same was unlawfully acquired, I find and hold that the 1st Defendant has proved its Counter-claim on the balance of probabilities.

24. For those reasons, I allow the Counter-claim dated 24th July, 2017 in the following terms:

a. A declaration be and is hereby issued that the purported letter of allotment issued to the Plaintiffs on 4th February, 1999 is null and void.

b. A declaration be and is hereby issued that the 1st Defendant is the lawful owner of L.R. No. 337/3742.

c. A permanent injunction be and is hereby issued restraining the Plaintiffs, their servants and/or agents from entering the suit property or interfering in any manner whatsoever with the 1st Defendant's quiet enjoyment of the suit property and also the quiet enjoyment by the purchasers of maisonettes constructed by it on the suit property.

d. The 1st Plaintiff to pay the costs of the Counter-claim to the 1st Defendant.

e. The 1st Plaintiff to pay to the 1st Defendant the costs of the Plaintiff.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4TH DAY OF MAY, 2018.

O.A. ANGOTE

JUDGE