



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 6 OF 2016

JOHN KIBET BII PLAINTIFF

VERSUS

MARTIN KIRONGET MOGOI DEFENDANT

JUDGEMENT

1. In the plaint dated **18th January 2016** and filed on the same date, the Plaintiff prays for judgement against the Defendant for:

(i) An order for a declaration against the defendant that the Plaintiff is the lawful allottee of Plot No.1169 Kitalale Settlement Scheme, Phase III and for a permanent injunction restraining the defendant whether by himself, servants, agents and/or any other persons acting through the defendant's from trespassing and/or entering, wasting or interfering with Plot No. 1169 Kitalale Settlement Scheme, Phase III, measuring 2.5 acres thereabouts and/or in whatever other manner interfering with the Plaintiff's rights therein.

(ii) Costs and interest in this suit.

(iii) Any other relief this Honorable court may deem fit to grant.

2. According to that plaint the plaintiff's case is that he was allotted the suit land which measures **2.5 acres** and that he paid all the requisite fees to the Settlement Fund Trustees and has been in occupation thereof since **2002**. However in **2007** the defendant without any justifiable cause trespassed onto the suit land and laid claim of ownership of the land. The defendant was arrested by the police but escaped while on bond pending arraignment in court.

3. The defendant filed his defence dated **4/3/2016** on **5/4/2016**. He stated he was settled on plot number **461** in the scheme by his father in the year **2001** after his father was allocated the plot in the year **2000** and that he has been in such quiet possession ever since. He denied that the plaintiff has been in occupation of the land. He further states that no action could be taken by the police upon the plaintiff's report to them as the plaintiff was unable to prove his ownership of the land when he went to them. He accused the plaintiff of fraud in having the land allocated to himself. The plaintiff filed a reply to the defence on **20/4/2016** and reiterated the contents of his plaint.

The Plaintiff's Evidence

4. The plaintiff testified on **19/3/2018**. He produced documents relating to the allocation of **Plot Number 1169- Kitalale Settlement Scheme**. In particular he produced a letter of allotment and a receipt for payment of **Ksh 3000** in respect of the allotment. He stated that when the defendant ploughed his land he reported to the District Officer who wrote a letter dated **20/3/2007** summoning the defendant. That letter was produced as **P.Exh 3**. The plaintiff was then ordered by the administration not to enter the land but he defied the order. The plaintiff then reported to the police but the defendant could not be found, though he appeared on the land from time to time and ploughed or worked on the land. The plaintiff would note evidence of this activity each time he visited the land. Thereafter the defendant was arrested once and released on a cash bond but he disappeared upon release. The plaintiff produced map of the **Kitalale Settlement Scheme Phase 3** to show that **Plot Number 461** does not exist thereon. He insisted that **Plot Number 461** is located in **Kitalale Scheme Phase 1**. He stated that the two **Plots 461** and **1169** are different. He averred that he was shown **Plot Number 1169** by the Ministry of land officers and that he ploughed it but someone else planted on it thereafter. He stated that the land is unoccupied for now but there is a structure on it. He said there are no trees on the land as they had been cut by an unknown person. On cross examination he admitted that by the time of the allocation of the land to him a relative of the defendant was in occupation of the land.

5. **PW2, Francis Obiria Oseko**, the County Land Adjudication and Settlement Officer testified in the plaintiff's case on **29/5/2018**. His evidence was that he keeps records of land allocations in the County and received revenue from settlers and witnesses the execution of documents to facilitate issuance of title deeds. According to him Kitalale Scheme is administered in **3 phases** and there are no cases of double allocation. His evidence is that the allocation letter in respect of **Plot No 1169** bears the plaintiff's name. The plot was allocated to him on **2/12/2002**. **Plot No. 461** on the other hand was allocated to **Jonathan Kironget** vide a letter dated **18/8/2000**. The two plots are on

different maps. **Plot No 461** is located in Phase 1 while **Plot No 1169** is located in Phase 2. He produced the official file records for the two plots. According to the witness the defendant is trespassing on **Plot No. 1169**.

6. PW3 Joshua Kibet Chelanga testified on **29/5/2018**. He identified himself as a Surveyor with the Ministry of Lands and Housing stationed at Kitale. His duties are to survey the land and show the allottees their respective parcels. His evidence is that he visited the suit land on **25/5/2018** in the presence of a neighbour. He stated that **Plot No. 461** is located in Phase 1 of the scheme while **Plot No. 1169** is located in Phase 3 of the scheme. He identified **Plot No. 461** as belonging to the defendant's father. He pointed out that plot on the Phase 1 map. He also pointed out **Plot No. 1169** on the Phase 3 map and stated that allocation thereof was to the plaintiff. The maps were produced in evidence as **P.Exh 7(a) (Phase 1)** and **7(b). (Phase 2)**. He also testified that the person currently in occupation of **Plot 461** is named **Abdallah Ratam**.

The Defendant's Evidence

7. The defendant testified on the **29/5/2018**. He never called any witness to give evidence in his defence. He stated that his father had been allocated **Plot No. 461** in **Kitalale Scheme Phase 3** of the scheme. However when they were taken to the land there was another person on the land and they were shown another plot on which his father settled him and his younger brother. They have lived on the plot since **2000** but they cultivated the land for the first time in year **2001**. The plaintiff appeared in the year **2006** while he was following up on the ownership of the suit land. They later met about 3 times. Upon following up with the local Chief the Chief declined to order that the defendant be moved from the land. The defendant was taken to the police station where the plaintiff's father said that the defendant should not be incarcerated as he wanted to reach a settlement with him. However a complaint was made in the year **2007** that the defendant had trespassed on the suit land and he was arrested and later given a free bond. When the disputing parties met before the Officer Commanding Station they were referred to the Ministry of Lands Office where the plaintiff's father was informed that he would be given an alternative plot. According to him, he has never been presented with any evidence that the plot that he occupies is not **Plot No. 461**. Upon cross examination he stated that he did not have any land in Kitalale Scheme, that he does not have any succession documents in respect of his late father's estate and that his father was shown the suit land in the year **2000**. He acknowledged that it is the Settlement Officers who should show settlers their parcels.

Submissions

8. The plaintiff filed his submissions on the **20th July 2018** and the defendant filed his on the **16th July 2016**. I have considered those submissions.

Determination

Issues for determination.

9. The issues for determination in this matter are as follows:

- (a) Whether the defendant is in occupation of the suit land;*
- (b) Who is the proper allottee of the suit land?*
- (c) What orders should issue?*

The issues are discussed herein below.

(a) Whether the defendant is in occupation of the suit land

10. On this issue this court will rely on the expert evidence of **PW2** and **PW 3** which was unshaken in cross examination. The defendant never called any expert witness to controvert the evidence of the County Land Adjudication and Settlement Officer and the Surveyor in respect of the suit land. **PW1** and **PW2** have proved that **Plot No. 1169** is located in Kitalale Scheme Phase 3 and that the defendant is in occupation thereof.

(b) Who is the proper allottee of the suit land?

11. The plaintiff testified that the defendant is in occupation of the suit land and though the defendant denied it, he never called expert evidence to demonstrate which plot he was in occupation of. On the other hand the evidence of **PW2** and **PW3** was sufficient in my view to establish that the defendant is in occupation of the suit land. Further evidence from the two witnesses showed that the defendant's plot exists and that it is located in **Kitalale Scheme Phase 1** and is occupied by a different person. There was no evidence of any double allocation.

(c) What orders should issue?

12. In the light of the foregoing, I find that the plaintiff has proved his case against the defendant in this matter. He is the person who was allotted the suit land and the defendant is in wrongful occupation thereof. The evidence of the **PW2** and **PW3** shows that the defendant should move to **Plot No. 461** located in Kitalale Settlement Scheme Phase 1 and settle there as that is the appropriate plot that was allocated to his father.

13. In the circumstances I find that the plaintiff has established his claim against the defendant on a balance of probabilities and I hereby

enter judgment in his favour and issue the following orders:

(a) An order of declaration, declaring that the Plaintiff is the lawful allottee of Plot No.1169 Kitalale Settlement Scheme, Phase III.

(b) An order that the defendant shall vacate and remove his belongings at his own expense from the Plot No.1169 Kitalale Settlement Scheme, Phase III within 90 days of the service of this order failure to which he shall be evicted forcibly therefrom;

(c) An order of a permanent injunction restraining the defendant whether by himself, servants, agents and/or any other persons acting through the defendant's from trespassing and/or entering, wasting or interfering with Plot No. 1169 Kitalale Settlement Scheme, Phase III, and/or in whatever other manner interfering with the Plaintiff's rights therein.

(d) An order that the defendant shall bear the costs of this suit.

It is so ordered.

Dated, signed and delivered at Kitale on this 24th day of **September, 2018.**

MWANGI NJOROGI

JUDGE

24/9/2018

Coram: Before Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga holding brief for Ngeywa for plaintiff

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGI

JUDGE

24/9/2018