



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 299 OF 2017**

**JOYCE KILONZO.....PLAINTIFF**

**VERSUS**

**HON. ATTORNEY GENERAL.....1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION .....2<sup>ND</sup> DEFENDANT**

**MACHAKOS COUNTY GOVERNMENT.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. In the Notice of Motion dated 12<sup>th</sup> July, 2017, the Plaintiff is seeking for the following orders:

**a. That pending the inter-partes hearing and determination of this suit, order to issue directing the Land Registrar to register restriction on the Land title UNS. Residential Plot No. 595 vide the allotment letter dated 24<sup>th</sup> February, 1995 (“the Plot”) as described in the allotment letter dated 24<sup>th</sup> February, 1995 (“the Plot”) and injunction barring the Defendants either by themselves, their agents, servants or in any manner howsoever from advertising, leasing, charging, selling, dealing with, conveying, charging, leasing, sub-dividing, encroaching on trespassing and/or remaining on land title UNS. Residential Plot No. 595 vide the allotment letter dated 24<sup>th</sup> February, 1995 (“the Plot”) as described in the allotment letter dated 24<sup>th</sup> February, 1995 (“the Plot”) and/or interfering with the Plaintiff’s legal, contractual, equitable interests and/or rights of quiet ownership, possession, occupation and enjoyment thereof.**

**b. That the costs of this Application be paid by the Defendants/Respondents.**

2. The Application is supported by an Affidavit of the Plaintiff who has deponed that he was allocated parcel of land known as UNS. Residential Plot No. 595 vide the allotment letter dated 24<sup>th</sup> February, 1995; that the Defendants have refused to give him any information as to progress of the process of issuance of the Certificate of Lease and that the Defendants should be restrained from allocating the said land to another person.

3. The Defendants filed Grounds of Opposition in which they averred that there is no suit for determination by the court and that the Application as filed is premature, a non-starter and an abuse of the court process.

4. In his submissions, the Plaintiff’s advocate submitted that the Defendants have not challenged the Plaintiff’s averment that she is the first allottee of the suit land; that the Defendants have not denied that the records in respect of the suit land are missing and that unless the orders are given, the Plaintiff will suffer irreparable damage.

5. The Defendants’ counsel submitted that the letter of allotment on its own does not confer ownership of the suit property on the allottee; that the Land Registrar cannot register a restriction against a letter of allotment and that there is an elaborate procedure in allocation of public land.

6. The Plaintiff filed in this matter shows that the Plaintiff is seeking for a revocation of “*any other Certificate of Lease or Title Deed which may have been issued to any other party other than himself and rectification of records.*” In the meantime, the Plaintiff is seeking for an order directing the Registrar of Lands to enter a Restriction on unsurveyed residential Plot No. 595 and for an injunctive order.

7. The suit and the Application before the court is not only bad in law but also was prematurely filed. The suit and the Application are speculative in nature and do not raise any triable issue. Indeed, having stated that she is in possession of a letter of allotment, which is an offer from the government, the Plaintiff’s prayers defeat the very purpose that the said letter was issued to her. How would she pursue the issue of issuance of a title document with an injunction in place? In any event, the Plaintiff cannot claim to be the absolute owner of the suit property when the process of allocation of the said land has not been completed.

8. Considering that the letter of allotment is not a title to property but an offer to take property, the Plaintiff should await the process of allocation of public land to go through. The orders of restriction or injunction against the government cannot issue in the circumstances. Ultimately, it is the Defendants who will determine, based on the documents in their possession, the person who is entitled to the land. It is only after that decision has been made that the Plaintiff can lawfully file a suit.

9. For those reasons, I dismiss the Application dated 12<sup>th</sup> July, 2017 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 19<sup>TH</sup> DAY OF OCTOBER, 2018.**

O.A. ANGOTE

JUDGE