



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CIVIL CASE NO. 268 OF 2016

MUPA OPARA ALIMA.....PLAINTIFF

-VERSUS-

RAMA KOMBE.....1ST DEFENDANT

COUNTY GOVERNMENT OF MOMBASA.....2ND DEFENDANT

JUDGEMENT

1. The plaintiff brought her suit against the two defendants vide her plaint dated 20th September 2016 seeking to be awarded judgment against the defendants jointly and severally for:

i. Cancellation of the letter of allotment issued to the 1st defendant in respect of Plot MOMBASA/MIRITINI 100 within MIRITINI SETTLEMENT SCHEME and an order that the 2nd defendant issues an allotment letter to the plaintiff in respect of Plot MOMBASA/MIRITINI 100 within MIRITINI SETTLEMENT SCHEME.

ii. A permanent injunction restraining the 1st defendant by himself, his agents, servants and or assignees from trespassing, constructing, selling or in any way dealing with Plot MOMBASA/MIRITINI 100 within MIRITINI SETTLEMENT SCHEME.

iii. Costs of this suit.

iv. Any other orders that this Honourable Court deems fit to grant.

2. The plaintiff pleaded that she has constructed a permanent house on the land where she has been living with her children who are all now grownup. That in 2002, the scheme was divided into plots and allotment letters issued to the residents but she never received her letter. On following up, she learnt in 2013 that her plot had been allocated to the 1st defendant. Her efforts to have the 1st defendant's letter cancelled bore no fruit hence this suit.

3. In a statement of defence filed on 17th December 2016, the 1st defendant denied the plaintiff's claim. The 1st defendant avers that the plot was lawfully allocated to him. He denied the allegations of fraud labelled against him and put the plaintiff to strict proof. The 1st defendant pleaded for the dismissal of the plaintiff's suit. I did not trace the 2nd defendant's defence in the file.

4. After pleadings closed, the plaintiff and 1st defendant each called one witness. The plaintiff testified on 23.1.2018 stating that she took occupation of the land by cultivating it and putting up a house. She produced a photograph of her house in evidence. That the land officers were giving letters of allotment but she has not received hers inspite of giving her details. PW 1 said she currently lives with her grandchildren at Magongo because of ill health but the suit plot is her home. The plaintiff stated that the 1st defendant is her neighbour for a long time. In her written witness statement, she reiterated the contents of her plaint that the 1st defendant was irregularly allotted the plot.

5. In cross – examination by 1st defendant plaintiff stated she has lived on the plot for 19 years and her house was built long ago. That her name was recorded by the committee but she has not been given an allotment letter. In cross – examination by counsel for 2nd defendant, the plaintiff said no one gave her the plot. She just built. That she has not written any letter to the county government. During registration plot numbers were given by the committee members. That it is the 1st defendant who told her he was given an allotment letter for her plot. This was the close of the plaintiff's case.

6. The 1st defendant testified on 22.5.2018. He also lives in Miritini and is a neighbour to the plaintiff. The 1st defendant said he got the plot through inheritance. That the plaintiff's husband was allocated plot No 84 according to the letter dated 27.8.2007 issued to Kaka Tsuma. That Tsuma requested the committee for a place to build as his plot No 84 was far on condition that he would move out if demand is made. The 1st defendant contended he was in that meeting where Tsuma presented his request. That Tsuma was allowed to build on 1st defendant's plot but after his death, the plaintiff refused to move out. That Tsuma's son sold plot No 84. He denied getting his letter through fraud.

7. During cross – examination, the 1st defendant stated that in 2007 he was 19 years old and was not a minor. That before the plots were distributed, the plaintiff was not living there. The 1st defendant lives on her mother's plot. That he had no evidence to show Tsuma was to build on a temporary basis. That he has not sold his plot but some of his brothers have sold theirs. In cross – examination by 2nd defendant, the witness said the land was given to them by the ministry and thus no reason to blame the county government. In re – examination, the 1st defendant stated his allotment letter reads minor because he had not obtained an ID at the time. This marked close of 1st defendant's case. Miss Kizingo advocate for 2nd defendant confirmed they did not file any defence and therefore closed their case without calling any evidence.

8. The parties filed written submissions which gave a summary of the evidence adduced. From this evidence, the 2nd defendant was wrongly sued as it is clear they were not involved in the plot allocation. It is also not in dispute that the plaintiff has a house on the suit plot No 100. According to the 1st defendant, the plaintiff's husband was allowed to build albeit on a temporary basis and was to surrender vacant possession on demand.

9. From the contents of the letter of allotment issued to the 1st defendant and dated 27th August 2007, the plot belonged to the government. The same was allocated upon an application made by the 1st defendant to the Settlement Fund Trustees. It is thus not true as alleged by the 1st defendant that he got this plot through inheritance. The plaintiff stated that she has lived on the plot for a long time and when she was building her house, the 1st defendant was school going. Both parties admit they are neighbours. If the 1st defendant recognises the plaintiff as his neighbour then he ought to have rebutted the plaintiff's evidence that she has lived on the land for long. The averment that the plaintiff's husband was given the plot to occupy on a temporary basis was not corroborated. Secondly the land being government land the 1st defendant could not have more rights than the plaintiff given he was not in occupation.

10. In light of the evidence that the plaintiff was in occupation at the time the plots were being issued with letters of allotment, it was irregular for the 1st defendant to be issued with a letter over the suit plot. The facts of this case warrants that the 1st defendant's name be cancelled as allottee of plot No 100 and in his place the plaintiff be issued with a letter of allotment. Since the 1st defendant is not the allotting authority, I make an order directed at the Director Land Adjudication and Settlement Officer for Mombasa though not joined in this suit to effect the changes. The plaintiff's suit thus succeeds with an order that each party to bear their respective costs of the suit.

Dated, signed & delivered at Mombasa this 22nd November 2018

A. OMOLLO

JUDGE