



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 77 OF 2014

ANDREW MUNERIA MUNYOLMO.....PLAINTIFF

VERSUS

THE LAND ADJUDICATION

AND SETTLEMENT OFFICER.....1ST DEFENDANT

THE HONOURABLE

ATTORNEY GENERAL.....2ND DEFENDANT

J U D G E M E N T

INTRODUCTION

1. The plaintiff brought this suit against the defendants claiming the following reliefs:-

(a) A declaration that the plaintiff is the bonafide lawful allottee of Agricultural Plot No. 820 Kitalale Settlement Scheme and that the entry of the name Andrew M. Mutuku as the allottee is therefore null and void.

(b) An order directing the first defendant to rectify the register or records in respect of Agricultural Plot No. 820 Kitalale Settlement Scheme by cancellation of the entry of Andrew M. Mutuku as the allottee and indicating the plaintiff as the allottee thereof.

(c) Costs of the suit together with interest thereof.

(d) Any such further relief as this Honourable Court shall deem fit to grant.

PLAINTIFF'S CASE

2. The plaintiff testified that in 1996, he and some other people visited retired President Daniel Arap Moi who offered to give them land. On **5/11/1996** he was given a letter of allotment in which he was allocated **Plot No. 820 at Kitalale Settlement Scheme**. He paid the requisite amount as stipulated in the letter of allotment. A list of all beneficiaries was then prepared and according to that list, he is the beneficial owner of Plot No. 820.

3. The plaintiff later visited the lands office where he learnt that the records held there indicated that the allottee of Plot No. 820 was one **Andrew M. Mutuku**. He went to his advocate who wrote a demand letter to the settlement office to rectify the register but that was not done prompting him to file a suit against the defendants.

4. The plaintiff further stated that he had earlier on been allocated **Plot No. 338 at Kitalale Settlement Scheme Phase 1** which plot later changed to **Plot No. 336** but that this plot is different from **Plot No. 820**.

DEFENDANTS CASE

5. The defendants stated their case through **Francis Obiria Oseko** the County Land Settlement Officer, Trans-Nzoia. He conceded that indeed the plaintiff had been allocated **Plot No. 820** by the commissioner of lands. He however went on to state that Kitalale Settlement Scheme was handed over to the Settlement Fund Trustee (SFT) in 1994.

6. When the Kitalale Settlement Scheme was taken over by the SFT, there had to be re-planning. During this re-planning, **Plot No. 820** changed to **Plot No. 336**. The plaintiff herein then sold **Plot No. 336** to one **Benson Masai Pkanea**. There were many complaints which arose after the re-planning of the scheme. A committee was formed which prepared a report. The report was sent to the Provincial Settlement Officer Rift Valley. Following this report, the Provincial Land Adjudication Officer wrote a letter dated 14/10/1998 cancelling all the allocations which had been made by the Commissioner of Lands. Fresh letters of offer were then issued by the settlement office.

7. The witness went on to state that the scheme having been taken over by the SFT, the commissioner of lands ceased to have any control over the allocation of land and any payments or allocations could only be through the SFT local office or the headquarters in Nairobi. The officers from the SFT went to the ground and found that **Plot No. 820** was occupied by **Samson Kisembe Kiboi** who was also the owner of **Plot No. 851** which was adjacent to **Plot No. 820**. The witness testified that according to their records, **Plot No. 820** was given to **Samson Kisemba Kiboi**.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

8. There is no contention that the plaintiff had been allocated Plot No. 820 by the commissioner of lands. There is however evidence that there was re-organization of Kitalale Settlement Scheme which led to new numbers. A look at the evidence adduced shows that the following are issues for determination:-

(i) Whether there was change of plot numbers following the take over of the scheme by the SFT.

(ii) Whether the plaintiff has any proprietary interest in Plot No. 820.

(iii) Who is the beneficial owner of Plot No. 820?

(iv) Which order should be made on costs?

Whether there was change of plot numbers following the take over of Kitalale Settlement Scheme by the SFT

9. The County Settlement Fund Trustee Trans-Nzoia testified that following the take over of Kitalale Settlement Scheme by the SFT, plot numbers changed. According to him **Plot No. 820** became **Plot No. 336** which is owned by the plaintiff. The plaintiff on the other hand argues that he was allocated **Plot No. 338** which later changed to **Plot No. 336** in 1994 and therefore it cannot be true that **Plot No. 820** is the one which became **Plot No. 336**.

10. The plaintiff's argument that he was allocated Plot No. 336 in 1994 is without any basis. Evidence on

record shows that he was allocated **Plot No. 336** on **19/11/2002**. It is therefore not true when the plaintiff claims that he was allocated Plot No. 336 in 1994. The allocations by the commissioner of lands were nullified vide letter of 10/10/1998. Fresh allocations were made and this is when the plaintiff was allocated Plot No. 336 on 19/11/2002.

11. The evidence by the County Lands Settlement Officer was credible and it could not be shaken even in cross-examination. His evidence that Plot No. 820 is what became Plot No. 336 was not controverted. I therefore find that there were changes in plot numbers following the cancellation of the allotments which had been given by the commissioner of lands.

Whether the plaintiff has any proprietary interest on Plot No. 820

12. The pleadings by the plaintiff are that **Plot No. 820** was allocated to him but that it was later given to **Andrew Mutuku**. There was absolutely no evidence to show that Andrew Mutuku is the one whose name appears in the register. It is the plaintiff who had alleged and it was upon him to prove that that was the case. One of his prayers is that the name of Andrew Mutuku should be cancelled in the records and that it be replaced with his name. This cannot be done without evidence that Mutuku's name is the one in the register.

13. The evidence of **DW1 Francis Obiria** is that according to the records, it is **Samson Kisemba Kiboi** who is in possession of **Plot No. 820** and that it was allocated to him. Even if we were to assume that there was no change of plot numbers and that the allocation of Plot No. 820 was to the plaintiff, the question which will arise is whether he complied with the conditions in the allotment letter. The allotment letter was issued to the plaintiff on **5/11/1996**. Acceptance of the offer was to be made within **30 days** from the date of posting of the letter of offer. The plaintiff was expected to pay **Kshs.34,850/=** within that period. This is clear from the letter of allotment produced as Exhibit 1.

14. The plaintiff never made any payment until **5/6/2012**, sixteen (16) years after the expiry of the 30 days period which he was given. Even if any other person was given the same plot, then there was nothing prohibiting the allocating authority from doing so as the time within which the plaintiff was to comply had lapsed by effluxion of time. The plaintiff cannot therefore be heard to complain that his plot was allocated to someone else in a fraudulent manner. I therefore find that the plaintiff has no proprietary interest in Plot No. 820.

Who is the beneficial owner of Plot No. 820?

15. There is no clear evidence as to who is the beneficial owner of Plot No. 820 but certainly the plaintiff is none of them. The plaintiff alleges that records show that it is Andrew Mutuku who appears on the records but he was unable to prove this. On the other hand, the settlement office who are the custodian of the records of all allottees say that it is Samson Kisemba Kiboi who is the proprietor of the plot. There was no documentary evidence adduced to prove this. There was an attempt by the settlement officer to produce a report to show the ownership but the same was objected to by defence counsel. The state counsel then indicated that he was not going to produce the report. However be that as it may, I will take the evidence of DW1 Francis Obiria Oseko that it is Samson Kisemba Kiboi who is the beneficial owner of Plot No. 820 because they are the people in custody of records of the allottees of any scheme.

DECISION

16. It is clear from the analysis of the evidence hereinabove that the plaintiff has failed to prove his case against the defendants. The same is hereby dismissed with costs to the defendants.

Dated, signed and delivered at Kitale on this 20th day of January, 2017.

E. OBAGA

JUDGE

In the presence of Mr Khisa for Mr Ingosi for Plaintiff and M/s Onyono for Mr Kuria for the Defendants.

Court Assistant – Isabellah.

E. OBAGA

JUDGE

20/1/17