



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 147 OF 2010

THE TOWN COUNCIL OF KILIFI.....PLAINTIFF

VERSUS

ISAAC JUMA OBILA T/A

LAVINGTON MILK BAR.....1ST DEFENDANT

COMMISSIONER OF LANDS.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

1. In the Plaintiff dated 4th December, 2010, the Plaintiff averred that it is the custodian of all public utility plots in its jurisdiction; that some of the said utility plots are L.R Nos. 5054/771, 772 and 773 Kilifi Township and that the plots were later on registered as Kilifi Township Block 3/416, 417 and 418 respectively.
2. The Plaintiff has averred that parcel of land number 5054/771 was set aside for putting up a nursery school while the other plots were reserved for a Social Hall for public purposes.
3. It is the Plaintiff's case that in collusion with the 1st Defendant, the 2nd Defendant issued to the 1st Defendant Leases and proceeded to issue Certificates of Leases on 14th May, 2010 for the suit property and that the grant of those Leases and issuance of the Certificates of Leases to the 1st Defendant was fraudulent and amounted to outright theft of public utility.
4. The Plaintiff is seeking for a declaration that the suit properties are public utility plots and for cancellation of the Certificates of Leases that were issued to the 1st Defendant. The Plaintiff is also seeking for a permanent injunction restraining the 1st Defendant from dealing with the suit properties in any manner whatsoever.
5. In his Defence, the 1st Defendant averred that he was lawfully issued with the Certificates of Leases in respect to the suit properties.
6. The 3rd Defendant denied the particulars of fraud pleaded in the Plaintiff.
7. Although the Defendants were served with the hearing notice, they did not attend court on 1st November, 2016 when the matter came up for hearing. The matter proceeded for hearing in their

absence.

8. The then Town the Plaintiff PW1, informed the court that he received a complaint about the grabbing of the suit properties which were meant for public purposes and caused the current suit to be instituted.

9. According to PW1, Plot No. 771 was reserved for a Social Hall while plots No. 772 and 773 were meant for a nursery school.

10. PW1 informed the court that his investigations revealed that the 1st Defendant had been issued with letters of allotment for the three plots on 27th March, 1998 and that when he sought to know why the said letters of allotment had been issued to the 1st Defendant, the Commissioner of Lands informed him that they were forgeries. PW1 produced in evidence the alleged letters of allotment and the correspondences he had with the Commissioner of Lands.

11. PW1 also produced in evidence the purported Sale Agreement between the 1st Defendant and one Msalam Said Abdalla in which the 1st Defendant allegedly bought the three properties for Kshs. 500,000 per plot.

12. According to the letter dated 23rd March, 2010, the letters of Allotment dated 27th March, 1998 were all forgeries.

13. Considering that the Commissioner of Lands disowned the letters of Allotment dated 27th March, 1998, it follows that the Leases and the Certificates of Leases that were subsequently issued to the 1st Defendant should not have been issued.

14. The 1st Defendant did not rebutt the evidence of PW1 that indeed Plots Nos. 5054/771 (Kilifi Township/Block 3/416), 5054/772 (Kilifi Township/Block 3/417), and 5054/773 (Kilifi Township/Block 3/418) were reserved for public purpose.

15. In the circumstances, I find and hold that the Plaintiff has proved its case on a balance of probabilities.

16. For those reasons, I allow the Plaintiff's Plaint dated 4th December, 2010 in the following terms;

a. A declaration be and is hereby issued that the parcels of land originally known as L.R. Nos. 5054/771, 5054/772 and 5054/773 and now registered as Kilifi/Township Block 3/416, Kilifi/Township Block 3/417 and Kilifi/Township block 3/418 are and do remain as public utility plots within the Plaintiff's jurisdiction and that the grant of the Leases dated the 22nd day of April, 2010 and the subsequent issuance of the Certificates of Leases on the 14th day of May, 2010 to Isaac Juma Obila is fraudulent hence void ab initio.

b. An order be and is hereby issued directing the 1st Defendant herein to surrender and/or return the Leases and Certificates of Leases in his favour to the 2nd Defendant herein for cancellation thereof and that the 2nd Defendant notwithstanding the foregone to forthwith proceed to cancel the said Leases and the Certificates of Leases issued to the Plaintiff herein and to accordingly rectify the Register.

c. A permanent injunction be and is hereby issued against the 1st Defendant herein restraining him by himself and/or his servants, agents and/or employees whether each and/or all of the them or otherwise from in anyway whatsoever dealing with the suit property herein and/or claiming any interest into all and/or anyone of the said public utility plots and/or acting in any manner whatsoever detrimental and/or contrary to public interest and/or acting in any manner whatsoever with a view of defeating the Plaintiff's interest in the parcels of land.

d. Costs of and incidentals to this suit to be paid by the 1st Defendant.

DATED AND SIGNED AT MACHAKOS THIS 2ND DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12TH DAY OF MAY, 2017.

J.O. OLOLA

JUDGE