



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC CASE NO 281 OF 2017

E M NGURE.....PLAINTIFF

VERSUS

DISTRICT LAND ADJUDICATION AND

SETTLEMENT NYANDARUA.....1st DEFENDANT

SETTLEMENT LAND TRUSTEE.....2nd DEFENDANT

DISTRICT LAND REGISTRAR NYANDARUA.....3rd DEFENDANT

JUDGEMENT

1. By a plaint dated 16th February 2016 the plaintiff herein instituted this suit against the defendants seeking for orders that:
 - i. A declaration that he was the legitimate owner of the parcel of land Plot No. 713 Mawingo settlement scheme
 - ii. That the 2nd and 3rd Defendants be ordered to transfer and issue the title deed for Plot No. 713 Mawingo settlement scheme.
 - iii. The plaintiff further sought for orders that the 2nd Defendant be ordered to sign transfer forms and all transfer documents for the plot No. 713 Mawingo settlement scheme in favor of the plaintiff and in default the Deputy Registrar of the court to sign the same to facilitate the transfer.
 - iv. Costs and interest as well
 - v. Any other relief that the court may deem fit to grant.
2. The pleadings as well as summons to enter appearance were served upon the defendants who filed their statements of defence as well as their list of witnesses and documents on the 5th July 2016.
3. Upon the Establishment of the Nyahururu High court and the subsequent transfer of matters from the Land and Environment Court Nakuru to the Land and Environment Court Nyahururu, Notices were issued and this matter was set down for mention.
4. On the 13th June 2017 when the matter came up for mention with a view of taking a hearing date, the court observed that the plaintiff was an elderly man of about 90 years old who wanted to proceed with the hearing of the matter despite the absence of the defendants.
5. I confirmed that the Defendants had been served with the days' notice as an affidavit of service had been filed therein.
6. The hearing of the matter was then scheduled for the 27th June 2017 with a hearing notice to issue.
7. On the day set for hearing however, the defendants were not present in court. There was an affidavit of service dated the 19th June 2017 and filed on the 22nd June to the effect that service had been effected upon the defendants for the hearing of the matter. In the absence of the defendants, the plaintiff sought for the matter to proceed.
8. Upon the court being satisfied that service was proper I proceeded to hear the plaintiff's case ex-parte.

The plaintiff's case

9. The plaintiff testified that he was allocated the suit land measuring 14.9 hectares in 1985 by the District Land Settlement scheme after paying Ksh 325/= and was issued with a receipt serial No. Z455202 dated the 28th February 1985 which he produced as exhibit 1.
10. That the people with whom he was allocated land were subsequently issued with their respective title deeds save for him. He further testified that although he has been requesting for the same for quite a while, he has not been issued with his copy of the title deed for land Plot No. 713 Mawingo settlement scheme. That he had written several letters to the Lands office in Nairobi to no avail. He therefore asked the court to consider the said documents which he had filed together with his pleadings.
11. The plaintiff testified that in the cause of waiting for a response to the many letters he had written, his land was invaded and his house demolished while others were burnt. The matter was reported at Ol Kalau police station wherein the perpetrators were arrested but later released.
12. After testifying the plaintiff stated that all he wanted was a title to his land which were his closing remarks.
13. I have looked at the documents filed by both the plaintiff and the Defendants which include;
- i. Payment receipt No. Z455202 dated 28th August, 1985 for Kshs 325/=
 - ii. Official search for Nyandarua/Mawingo Salient/713 dated the 22nd November 2013 which showed that the suit land was still registered with the Settlement and Fund Trustees.
 - iii. Letter dated 29th November 1994 from the District Land Adjudication and Settlement office Nyandarua.
 - iv. Copy of Map sheet No. 5 for Nyandarua/Mawingo Salient/713.
 - v. Letter dated 25th November 2013 from District Land Adjudication and Settlement Nyandarua North informing the Director Land Adjudication Nairobi on their findings on the ground as well as what was contained in their records. (This letter has been discussed in detail in the body of the judgment).
 - vi. Letters dated 1st July 2015 from District Land Adjudication and Settlement Nyandarua North was a complete replica of the one stated herein above dated the 25th November 2013.
 - vii. A copy of letter dated 15th January 2015 from Sichangi partners Advocates addressed to the Ministry of Land, Housing and Urban Development asking them to furnish the plaintiff with a report of the balance due and owing keeping in mind that he had lived on the suit land for 30 years.
 - viii. Letter dated 17th February 2012 addressed to Land and Settlement Nairobi by the plaintiff requesting to be issued with a title to the suit land and quoting the various letters he has written to them.
 - ix. Letter dated 11th October 2002 from Masese & Nyamwange advocates addressed to the Director Land settlement, Nairobi requesting for a response to a letter dated the 26th February 2002 which was not part of the list of documents.
 - x. Notice to sue dated 27th April 2015 addressed to the Hon the Attorney General from the plaintiff.
 - xi. Single permit receipt No 11727 for Ksh 6150/= dated 10th July 2014 and issued by the County Government Nyandarua for payment of a quarry business.
 - xii. A copy of letter dated 23rd July 2015 from the Director of Land Adjudication and Settlement-Nairobi, addressed to the District Land Adjudication and Settlement officer-Nyahuru informing them that the file pertaining to the subject suit had been missing in their registry and asking them to forward certified copies in their custody to enable them open a temporary file.
 - xiii. Application for a building stone quarry dated 2nd January 1985 from the plaintiff to the District Commissioner, Nyahuru.
 - xiv. Certificate of official search dated 26th April 2001 Nyandarua/Mawingo/713.
 - xv. Letter dated 29th February 2016 from the District Land Adjudication and Settlement officer-Nyahuru to the Office of the Hon attorney General asking them to enter appearance on their behalf and forwarding copies of the Plaintiff's documents, herein stated above.
 - xvi. Loan application form and acceptance, dated the 15th January 1993, for Ksh 50,000/= by one Michael G. Warugongo, to develop the suit land.

14. I have also looked at the defendants' statement of defence wherein they denied each and every allegation by the plaintiff adding that the suit disclosed no cause of action and was bad in law and incurably defective. They prayed for the plaintiff's suit to be dismissed.
15. Having heard the plaintiff's evidence as well as having looked at the documents filed herein above, the issues for determination in my view can be framed as:
- i. Whether the plaintiff has a valid title
 - ii. Whether he is the legitimate owner of the parcel of land Plot No. 713 Mawingo settlement scheme
16. A look at the receipt serial No. Z455202 dated the 28th February 1985 which was produced as exhibit 1 alongside a letter that the court was asked to rely on, namely the letter dated 29th February 2016 from the District Land Adjudication and settlement officer –Nyandarua North, the same is explicit that the said receipt was in payment of 10% land deposit and conveyancing fee paid for by the plaintiff.
17. I have also looked at a copy of a letter dated the 29th November 1994 addressed to the Director of Land settlement Nairobi from the District Land Adjudication and settlement officer –Nyandarua. The same was to the effect that according to the records held at the Nyandarua, the plaintiff was allocated the said suit land upon payment of land deposit and conveyancing fee, and asked that the necessary documents be prepared.
18. However a look at similar letters dated 25th November 2013 and 1st July 2015 respectively from the District Land Adjudication and Settlement officer, Nyandarua North and addressed to the Land adjudication and settlement Nairobi revealed the following:
- i. That the suit land was visited on the 23rd November 2013 wherein the plaintiff was found to have settled thereon and had made some developments too.
 - ii. That the records held in the Nyandarua office were to the effect that the land was documented in the name of one Michael W. Gichuki who signed legal documents on the 9th November 1984, took a development loan of Ksh 50,000/= in 1993 but his whereabouts was not known.
 - iii. That subsequently the plaintiff paid 10% land deposit and conveyancing fee of Ksh 325/=
19. There was no evidence adduced in court as to why and how this payment was done.
20. I have also perused the said Loan application form dated the 15th January 1993 and the same confirms that indeed one Michael G. Warugongo had taken the loan to develop the suit land.
21. A further look at the Official search dated the 23rd November 2013 for Nyandarua/Mawingo Salient/713, the suit land herein, the same is clear that the land was still registered in the name of Settlement Fund Trustees as per the year 2013. Meaning that the land was never allocated to the plaintiff in the year 1985 as claimed or if it was then he did not adhere to the terms and conditions set therein in the allocation letter, which the court had not opportunity see as it was not produced in court as evidence, and the same reverted back to the Settlement Fund Trustees.
22. I say this because the evidence adduced in court as well as the documentary evidence herein stated above, in my humble opinion, is not conclusive to give effect to the fact that the plaintiff is the legitimate owner of the parcel of land Plot No. 713 Mawingo settlement scheme.
23. Although he testified that he was allotted the plot in 1985 by the District Land Settlement scheme after paying Ksh 325/=, he neither produced a Letter of Allotment, which is mandatory, nor the acceptance letter, as exhibits to support his allegation, he also gave no explanation as to why he did not have these very vital documents.
24. The process of allotment of land includes and is not limited to the issuance of the letter of allotment which is an agreement/contract between the lessor and lessee and binds the lessee to meet the conditions set therein.
25. Violating the contract through non-payment of legal fees in the stipulated time, wrong usage of the land or non-payment of fees like land rent and rates are some of the conditions that will lead to a penalty and the land will revert to the government for allocation to another party.
26. After the letter of allotment is issued, a lease document is then prepared. The lease is finally registered in the County Land Registry and a Certificate of lease (title) issued to the lessee.
27. No evidence has been adduced by the plaintiff that he followed the above captioned process of the allotment, instead he seeks for orders that the 2nd and 3rd Defendants be compelled to transfer and issue the title deed for Plot No. 713 Mawingo settlement scheme to him.
28. On a balance of probability, he has not demonstrated that he was allocated the land. Being in possession of a receipt that is said to have been issued upon payment of land deposit and conveyancing fee of Ksh 325/= is not sufficient evidence of ownership.
29. At this juncture the court is not convinced that the suit land was ever allotted to the plaintiff, for he had nothing to show that indeed he was allotted the property.

30. Having found that the plaintiff failed to tender sufficient evidence in court of the allotment of No. 713 Mawingo settlement scheme, it cannot therefore be said that he holds a lease over the same so as to obtain an order from this court to compel the 2nd and 3rd Defendants to transfer and issue the title deed for Plot No. 713 Mawingo settlement scheme to him.

31. In the upshot, I find that the Plaintiff herein has not proved his case on a balance of probabilities and dismiss it with no cost.

32. It is so ordered.

Dated and delivered at Nyahururu this 17th day of October 2017.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE