



Kenya Pipeline Company Ltd v Judiciary of Kenya & 2 others (Environment & Land Case 264 of 2019) [2024] KEELC 1205 (KLR) (22 February 2024) (Judgment)

Neutral citation: [2024] KEELC 1205 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 264 OF 2019
EK WABWOTO, J
FEBRUARY 22, 2024**

BETWEEN

KENYA PIPELINE COMPANY LTD PLAINTIFF

AND

THE JUDICIARY OF KENYA 1ST DEFENDANT

THE NATIONAL LAND COMMISSION 2ND DEFENDANT

THE HON ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. The dispute in this suit relates to property currently known as LR No 209/19723 (IR 122478) situated in Upper Hill area Nairobi. Both the Plaintiff and 1st Defendant have laid claim to the same. In the plaint dated 9th August, 2019, the Plaintiff seeks the following reliefs:
 - a. A declaration that the suit property was irregularly allotted and registered in the name of the 1st Defendant.
 - b. A declaration that the Plaintiff is the rightful owner of the suit property.
 - c. An order that the allotment to the Plaintiff be reinstated and the records on the title of the suit property to indicate the Plaintiff as the original and rightful owner.
 - d. A permanent prohibition against the 1st and 2nd Defendants barring them from interfering with or in any way dealing with the suit property.
 - e. An order that the 1st Defendant delivers vacant possession of the suit property to the Plaintiff.
 - f. Costs of the suit.
 - g. Any other relief as this court may deem just and fit to grant.



2. The suit was contested by the Defendants. The 1st and 3rd Defendants filed a statement of defence dated 25th September, 2019 wherein they denied the averments made in the plaint and prayed for dismissal of the Plaintiff's suit with costs.
3. The 2nd Defendant equally filed its statement of defence dated 27th September, 2019 where it similarly denied the averments made by the Plaintiff and prayed for the dismissal of the Plaintiff's suit against it with costs.

Plaintiff's case

4. The Plaintiff's case is that vide an allotment letter Ref No 44805/IV/129 dated 8th January 1988, the Government of Kenya offered it a grant of unsurveyed plot No B Upper Hill Area Nairobi.
5. It was averred that a subsequent allotment letter Ref No 122059/20 dated 15th February 1990 was thereafter issued to the Plaintiff upon their request to adjust the Northern and Western Boundaries of the plot hence superseding the previous allotment letter.
6. The Director of Surveys vide a letter Ref. No CT/141/Vol. 4/175 dated 24th November 1999 confirmed survey and registration of the plot in the Letter of Allotment Ref No 122059/20 as LR No 209/12044 which is the current suit property.
7. On or about 8th May 1998 the suit property was irregularly allotted to Kenya (RTF) Ltd, under a previous title number LR No 1209/10777 and a grant registered as IR 89464.
8. Owing to the above action, the Plaintiff filed a protest letter with the Ministry of Lands and simultaneously filed a complaint with both the defunct Director of Criminal Investigations Department currently known as the Directorate of Criminal Investigations and the defunct Kenya Anti- Corruption Commission currently known as the Ethics and Anti- Corruption Commission.
9. It was further averred that investigations were commenced and a Caveat Emptor Notice was entered on the suit property following which Kenya (RTF) Ltd filed Milimani High Court Constitutional Petition No 61 of 2007 seeking declaratory orders among them that they were the rightful owners of the suit property. A Gazette Notice No 3460 of 1st April 2010 revoked the title of Kenya (RTF) Ltd. Lenaola J. (as he then was) later delivered judgment dated 19th September 2013 holding that the allotment of the parcel of land to Kenya (RTF) Ltd was irregular and dismissed the petition.
10. The Plaintiff averred that it made several futile requests to the 2nd Defendant requesting to be issued with the title deed for the suit property since allotment letters and deed plans on the same had been approved in its favour.
11. According to the Plaintiff, the records of the 2nd Defendant went on to reflect that the suit property had been re-allotted to the 1st Defendant. This re-allotment of the suit property was done without the revocation or cancellation of the first allotment made to the Plaintiff who is the rightful owner of the suit property.
12. During trial, Elizabeth Rop, a Legal Officer of the Plaintiff testified as the sole Plaintiff's witness. She reiterated the averments set out in the Plaint and added that the Plaintiff had tried to amicably resolve the dispute on numerous occasions before filing this suit. She also adopted her witness statement dated 9th August, 2019, a list and bundle of documents dated 9th August, 2019 and a Supplementary list and bundle of documents dated 11th January, 2022 in her evidence in chief.
13. In Cross-examination, she testified that the Judiciary is in occupation of the suit property and the title held by the Judiciary is in respect to LR No 209/19723 (IR/22478). She also stated that the suit



property was initially known as LR No 209/12044. She further stated that the parcel number that had been allocated to RTF was LR No 209/10777 which was later renumbered.

14. On further cross-examination, she stated that the purpose of the allotment to the Plaintiff was in respect to the construction and setting up of its proposed headquarters.
15. She conceded on cross-examination that the current headquarters of the Plaintiff's offices were not constructed on the suit property. She also conceded that she did not have the written acceptance of the allotment to the Plaintiff. She stated that while she was aware that the Plaintiff paid the amount of money that was required after issuance of the allotment letter she however did not have the receipts confirming the said payment. She also conceded that according to the allotment letter, payment was to be made within 30 days but she was not certain that the same had been made within the stipulated period. She also stated that the Plaintiff was to be allocated another property known as LR 9024/693 Embakasi in exchange of the suit property.
16. When asked about Milimani Constitutional Petition No 61 of 2007, Kenya (RTF) Limited v P.S. Ministry of Lands and others, she stated that the Court declined to confirm ownership to the Petitioner Kenya (RTF) and proceeded to dismiss the same. She also stated that both the Plaintiff and the 1st Defendant herein were not parties to the said Petition. She further stated that the judgment in respect to the said Petition was delivered on 19th September, 2013.
17. On further cross-examination, she stated that though the Plaintiff had been allocated LR No 9042/693 Embakasi in exchange of the suit property its Board decided against the said exchange.
18. When Re-examined, she stated that the suit property was never surrendered.

The case of the 1st and 3rd Defendants

19. The 1st and 3rd Defendants filed a joint statement of defence denying the averments made in the plaint. it was averred that the Plaintiff is not the owner of the suit property.
20. During trial, Joseph Maloba Were, a Senior Principal Magistrate currently attached at the office of the Chief Registrar of the Judiciary testified on behalf of the 1st and 3rd Defendants and was the sole defence witness in the matter.
21. He adopted and relied on his witness statement dated 11th October, 2021 and the 1st and 3rd Defendants list and bundle of documents dated 28th October, 2021 as his evidence in chief.
22. It was his testimony that the suit property was initially allotted to Plaintiff as claimed pursuant to the Letter of Allotment dated 15th February 1990, the purpose of the allotment was to enable KPC to construct its corporate headquarters on the suit property since all correspondence relating to the suit property during this period was referenced "Proposed KPC Headquarters - Upper Hill - Nairobi."
23. It was his testimony that rather than erecting its head offices on this land, the Plaintiff requested the Government for another parcel of land in Embakasi for its corporate headquarters and offered to surrender the suit property in exchange for this alternate parcel. According to his testimony, this was a conscientious decision which was arrived at by the Plaintiff for its own benefit after it had considered all relevant factors.
24. He stated that following the Plaintiff's request, the Government vide an allotment letter dated 12th March 2002, offered it an alternate parcel of land, being LR No 9042/6/23 situated in Embakasi for the erection of its corporate headquarters. However, KPC erected its headquarters at its Nairobi Terminal



as confirmed in its letter dated 26th September 2013 to the Commissioner of Lands where the then Acting MD. Mr. Charles K. Tanui stated as follows: -

“...Management felt that it would be cost effective to construct the Company's head offices at Nairobi Terminal. The construction works began in May 2000 and completed sometimes in August 2006.

The decision to relocate the head offices to Nairobi Terminal made the Upper Hill plot redundant as far as the Company's office accommodation was concerned. Consequently, Management invited the Board to discuss the exchange of the Upper Hill plot with another plot LR No 9042/693 which is situated next to pump station No 9.

The Board of Directors, during the 142nd Board meeting held on 13th December 2002, resolved that KPC would surrender plot No LR No 209/12044- Upper Hill to the Commissioner of Lands and accept in exchange plot LR No 9042/693-Embakasi after getting the valuation from the Office of the President and Ministry of Energy.”

25. It was stated that from Plaintiff's own admission, the company was offered LR No 9042/693 in Embakasi in exchange for the suit property.

26. He further stated that sometimes later vide a letter dated 28th August 2003 and addressed to the Commissioner of Lands, the Acting Managing Director of the Kenya Pipeline Company Ltd appeared to object to the allotment of the parcel in Embakasi, stating as follows with respect to the suit property:

“The purpose of this letter is to inform you that Kenya Pipeline Company will not agree to the exchange of its Upper Hill plot with the Embakasi plot or any other plot. The allotment letter dated 12th March 2002 should therefore be cancelled. We now look forward to receiving the title document for the Upper Hill plot that was allocated to us vide allotment letter Ref.44805/1V/129 and dated 8th January 1988,”

27. It was stated that despite this apparent change of heart, the Plaintiff accepted the alternative parcel of land and as such the suit parcel became available for allocation to other government entities Including the 1st Defendant, and therefore the Plaintiff cannot now lay claim to the suit property particularly because it already received LR No 9042/693 in exchange with the suit parcel and is still in possession of LR No, 9042/693.

28. When Cross-examined, he stated that the High Court Petition had been filed on 5th February, 2007 and that at that time, the Judiciary did not have a title to the suit property. He also stated that he was not sure whether the Judiciary had an allotment letter to the suit property and also was not sure whether they ever made any payment in respect to the same.

29. On further cross-examination, he stated that he was not aware if the Plaintiff ever took possession of the suit property. He also stated that the title issued to the Judiciary is dated 13th April, 2010.

30. When re-examined, he stated that the Registrar of the High Court was directed to take steps and occupy the land and indeed, the Judiciary did occupy the suit property. He also stated that the allocation of the suit property to the Judiciary was initiated through a Cabinet resolution. He also referred to a letter dated 5th February, 2009 which confirmed allocation of the suit property to the Judiciary. He also stated that the Judiciary was not a party to the proceedings relating to Milimani High Court Constitutional Petition No 61 of 2007. He further stated that he was not aware of any registration of the suit property in the name of the Plaintiff.



The Plaintiff's submissions

31. The Plaintiff filed written submissions dated 28th September, 2023. The Plaintiff submitted on the following issues:
 - i. Whether the title of the suit property is impeachable.
 - ii. Whether the suit property was allocated to the 1st Defendant
 - iii. Whether LR 209/19723 (I.R. No 122478) as held by the 1st Defendant is a lawful title.
 - iv. What remedies are available to the Plaintiff.
32. On whether or not the title to the suit land is impeachable, it was submitted that a title can only be impeached in two instances, one, where the title is obtained by fraud or misrepresentation and secondly, where the certificate of title has been acquired illegally, procedurally or through corrupt scheme. It was submitted that the Defendants have not presented before this Court any evidence of the process through which they acquired title to the suit property and that they had only referred to a Cabinet resolution acknowledging the growing demand for land in the Upper Hill area by government entities. The Plaintiff relied on the case of *Elijah Nyangwara v Stephen Njuguna & another* [2013] eKLR in support of its position.
33. On whether or not the suit property was allocated to the 1st Defendant, it was submitted that the suit property had already been allocated to the Plaintiff and hence, could not have been available for allocation to any other entity.
34. It was also submitted that Lenaola, J (as he then was) in Milimani High Court Constitutional Petition No 61 of 2007 had made a finding in his judgment that the allotment letter dated 18th February, 1990 issued to Kenya Pipeline Company Limited was still valid and the Petitioner had no lawful claim to it.
35. On whether the title LR No 209/19723 (I.R. No 122478 as held by the 1st Defendant is a lawful title, it was submitted that the same was not valid since the Plaintiff had not accepted the alternative land in exchange of the suit property. It was also submitted that the 1st Defendant had not offered any allotment letter, had not offered any evidence of the written acceptance as per Special Condition No 2, had not offered any evidence of payment of standard premium and ground rent and also its request for re-survey of the property. It was also submitted that the 1st Defendant's witness had lied to the Court by stating that the Plaintiff had been offered an alternative land in exchange of the suit property.
36. The Plaintiff concluded its submissions by urging this Court to grant the entire reliefs sought in the Plaintiff together with costs of the suit.

The Submissions of the 1st and 3rd Defendants

37. The 1st and 3rd Defendants filed their written submissions dated 5th October, 2023 raising three issues for consideration by the Court. These included the following:
 - a. Whether there was an exchange of the suit property with LR No 9042/693?
 - b. Whether the Plaintiff has proved the grounds to challenge the 1st Defendant's title as set out under Section 26(1) and (b) of the *Land Registration Act*?
 - c. Whether the Plaintiff is entitled to the land held and registered in favour of the 1st Defendant?



38. It was submitted that the suit property was initially allocated to the Plaintiff and the same became redundant when the Plaintiff erected its Headquarters at its Nairobi Terminal as confirmed in its letter dated 26th September, 2013 to the Commissioner of Lands and therefore, there was indeed an exchange of the suit property with LR No 9042/693.
39. It was further submitted that the Commissioner of Land's letter dated 21st November, 2001 had informed the Plaintiff that they had been offered an alternative plot at Embakasi and forwarded a Plan depicting the location of the alternative site. It was submitted that the Plaintiff was allocated LR No 9042/693 vide letter of allotment dated 12th March, 2002. Paragraph 2 of the said letter indicated that the said letter supersedes the earlier allocation and is an alternative for the earlier allocation of suit parcel.
40. It was contended that while the Plaintiff vide the letters dated 20th May, 2003 and 28th August, 2003 addressed to the Commissioner of Lands appears to reject the allotment of LR No 9042/693, the same came way after a letter of allotment dated 12th March, 2002 issued to the Plaintiff which was collected by one Mr. Waweru, an employee of the Plaintiff. The said allocation letter was in respect to LR No 9042/963, the alleged alternative plot.
41. The 1st and 3rd Defendants submitted that through the Ministry of Land's letter dated 16th February, 2009, the Ministry revoked the illegal allocation of the suit parcel to Kenya (RTF) Limited and directed that a title be issued in the name of Permanent Secretary, National Treasury as Trustees of the Judiciary and as such, the 1st Defendant was directed by the Ministry to re-possess the entire suit parcel. Subsequently thereafter the suit parcel was re-surveyed under Survey Plan No 307561 and deed plan No 307561 dated 12th April, 2010 and subsequently registered as LR No 209/19723 (I.R No 122478) measuring 0.4365 Ha and a grant issued in the name of the Permanent Secretary, National Treasury as Trustees of the Judiciary for a period of 99 years from 1st March, 2010.
42. It was argued that pursuant to Section 26 of the *Land Registration Act*, a Certificate of title shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is an absolute and indefeasible owner unless cogent evidence has been shown for it to be impeached. Reliance was made to the case of *Muikamba Kiranga & another v Faith Muthoni Marinya & 4 others* [2020] eKLR.
43. It was further argued that the Plaintiff neither pleaded fraud on the part of the 1st Defendant nor did it prove any fraudulent conduct on the part of the 1st Defendant and as such, this Court cannot proceed to cancel the 1st Defendant's title.
44. The 1st and 3rd Defendants also maintained that the Plaintiff had not produced any evidence of its ownership to the suit property and further that a letter of allotment cannot be proof of ownership in the place of a Certificate of Title. The Court was urged to dismiss the Plaintiff's suit with costs to the Defendants.

The submissions of the 2nd Defendant

45. The 2nd Defendant never filed any written submissions nor participated in the trial despite service.

Analysis and Determination

46. This Court having considered the pleadings, the evidence tendered by the parties and written submissions filed is of the view that the following are the salient issues for determination herein:

- i. Who between the Plaintiff and the 1st Defendant is the bonafide owner of LR No 209/19723 (I.R. No 122478)?



- ii. Whether the title to the suit property is impeachable?
- iii. Whether the Plaintiff is entitled to the prayers sought
- iv. What orders should issue as to costs?

Issue No I - Who between the Plaintiff and the 1st Defendant is the bonafide owner of LR No 209/19723 (I.R No 122478)?

47. Both the Plaintiff and the 1st Defendant are laying claim to the suit property known as LR No 209/19723 (I.R. No 122478) Interestingly, they are both claiming on the basis of allocation at one point or the other. From the evidence that was tendered, it was not disputed that the 1st Defendant is in possession of the suit property and further has a title to the same dated 13th April, 2010, issued in the name of the Permanent Secretary, Treasury as Trustees of the Judiciary for a period of 99 years from 1st March, 2010. Both parties having laid claim to the property are deserving proprietary protection and to adequately donate this protection this Court must look into the root to ownership of the suit property. This approach was well appreciated in the case of *Hubert L. Martin & 2 others v Margaret J. Kamar & 5 others* [2016] eKLR Equally in the case of Nairobi High Court Civil Suit No 1024 of 2005(O.S), *Milankumar Shah & 2 others v The City Council of Nairobi & another*, the court stated as follows:

“We hold that the registration of title to land is absolute and indefeasible to the extent firstly that the creation of such title was in accord with the applicable law and secondly where it is demonstrated to a degree higher than the balance of probability that such registration was not procured through fraud and misrepresentation to which the person or body which claims and relies on that principle has not himself or itself been part of a cartel which schemed to disregard the applicable law, and the public interest”.

48. In the instant case, the Plaintiff's claim was that on 8th January, 1998, it was offered a grant of unsurveyed plot No B, Upper Hill area vide an allotment letter Ref. No 44805/12/129 for 99 years from 1st January, 1988 for purposes of constructing an office block. It was also the Plaintiff's case that a subsequent letter Ref. No 122059/20 dated 15th February, 1990 was thereafter issued to the Plaintiff upon their request to adjust the northern and western boundaries of the property hence Superseding previous allotment letter. It was also averred that the Plaintiff accepted the offer and proceeded to fully fulfill the grant conditions including payment of allotment fees, survey fees. Subsequently, the Director of Surveys vide a letter Ref. No CT/141/Vol.4/175 dated 24th November, 1999 confirmed survey and registration of plot in the allotment letter of as LR 209/12044. It later came to the attention of the Plaintiff that the suit property had been irregularly allocated to Kenya (RTF) Limited. Subsequently thereafter, the title held by Kenya (RTF) Limited was revoked and the Constitutional that had been filed by Kenya (RTF) seeking declaratory orders among them that they were the rightful owners of the suit property was eventually dismissed and after the determination of the Petition, it transpired that the suit property had been re-allocated to the 1st Defendant.

49. The 1st Defendant on the other hand maintained that following its request for land within Nairobi for its expansion, the suit parcel was re-surveyed under survey plan No 307561 and deed plan No 307561 dated 12th April, 2010 and subsequently registered as LR No 209/19723 (I.R. No 122478) measuring 0.4365 Ha and allocated to the Judiciary. A grant was issued in the name of the Permanent Secretary National Treasury as Trustee of the Judiciary for a period of 99 years from 1st March, 2010. It was contended that the Plaintiff was given an alternative land known as LR No 9042/693 in Embakasi for its Corporate Head Office under the pretext that it would relinquish the suit property in exchange of the suit property.



50. It is trite law that he who alleges must prove. This is set out under Section 107(1)(2) of the [Evidence Act](#), which provides as follows:

- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

51. Sections 109 and 112 of the same Act states;

“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

“112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

52. In discussing the standard of proof in civil liability claims in this jurisdiction, the Court of Appeal in [Mumbi M’Nabea v David M. Wachira](#) [2016] eKLR stated as follows:

“In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen than not.

...The position was re-affirmed by the Court of Appeal in *Maria Ciabaitaru M’mairanyi & others v Blue Shield Insurance Company Limited* -Civil Appeal No 101 of 2000 [2005] 1 EA 280 where it was held that:

“Whereas under section 107 of the [Evidence Act](#), (which deals with the evidentiary burden of proof), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same Act recognizes that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.”

53. With respect to the burden of proof, the learned Judges of Appeal in the case of [Palace Investments Limited v Geoffrey Kariuki Mwenda & another](#) [2015] eKLR, posited thus:

“Denning J, in *Miller v Minister of Pensions* [1947] 2 All ER 372 discussing the burden of proof had this to say; -

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that a tribunal can say: we think it more probable than not; the burden is discharged, but, if the probabilities are equal it is not.

This, burden on a balance or preponderance of probabilities means a win however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept where both parties...



are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained.”

54. The Court will be guided by the foregoing. During trial, it emerged that save for the allotment letters that were produced in evidence, the Plaintiff has never had any title to the suit property known as LR No 209/19723 (I.R. 122478). It was also evident that the Plaintiff has never taken possession nor been in occupation of the same. It also emerged that the suit property had initially been allocated to the Plaintiff for the construction of its office accommodation and or headquarters but was never utilized for the said purpose. These was confirmed in evidence by the testimony of Elizabeth Rop who testified on behalf of the Plaintiff.

55. In a letter dated 26th September, 2013 which was produced in evidence, it was evident that the Plaintiff despite having been allocated the suit property proceeded to construct and or erect its headquarters at a separate property in its Nairobi Terminal. The said letter had been addressed to the Commissioner of Lands confirming the same. There was also an exchange of the suit property with LR No 9042/693 based at Embakasi as confirmed in a letter by the Plaintiff dated 26th September, 2013. The letter had the following contents:

“The Board of Directors, during the 142nd Board Meeting held on 13th December, 2002, resolved that KPC would surrender Plot No 209/12044 – Upper Hill to the Commissioner of Lands and accept in exchange Plot No 9042/693 Embakasi after getting the valuation from the office of the President and Ministry of Energy.”

56. It also emerged that the Plaintiff equally expressed its interest in acquiring LR No 9042/693 and requested for its valuation vide the letter dated 3rd September, 2002.

57. In analyzing this issue, the Court has considered the evidence adduced and it indeed remains clear that the Plaintiff only had an allotment letter but did not produce any evidence conferring it ownership in form of title to the property. In respect to allotment letters, the law is settled to the effect that only once a letter of allotment is issued and the terms thereon accepted, that title comes into existence. The Supreme Court of Kenya in the case of *Torino Enterprises Limited v Attorney General* (Petition No 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment) stated that;

“It is settled law that an allotment letter is incapable of conferring interest in land, being nothing than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr. Joseph N. K. Arap Ng’ok v Justice Moiyo Ole Keiyua & 4 others* C.A 60 of 1997 (unreported) and in *Gladys Wanjiru Ngancha v Teresa Chepsaat & 4 others* High Court Civil Case No 182 of 1992 [2008] eKLR, the superior courts restated this principle...”

58. In the aforementioned case, the court clarified that an Allotment Letter serves as an offer pending the fulfillment of conditions and cannot grant an interest in land. To obtain valid title, an allottee must meet the stipulated conditions and then register the land in order for a transfer to be conducted. Registration is a crucial step for conferring transferable title to the registered owner. This was also the holding by the Court of Appeal in the case of *Wreck Motor Enterprises v Commissioner of Lands & 3 others* [1997] eKLR, who held as follows:

“Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of a title document pursuant to the provisions held.”



A similar decision which was cited by the Supreme Court was made in the case of *Joseph Arap Ngok v Justice Moyo Ole Keiwa*, Nairobi HCCA, Appl. No 60 of 1997 (Unreported) where it was observed as follows:

“It is trite that such title to land properly can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.”

59. In the case of *Evans Katusi Michao v Permanent Secretary, Ministry of Roads, Public Works and Housing & another* [2013] eKLR, where it was held that when a court is called upon to make a distinction between a party who has an allotment letter and one who has a title, then the right to property protected under the law and the *Constitution* is afforded to registered owners of land that since a letter of allotment is not proof of title as it is only a step in the process of allocation of land.
60. The evidence adduced herein confirmed that the Plaintiff never utilized nor developed the suit property and due to the ongoing demand and request for land from various government entities, they were offered an alternative plot in exchange of the suit property which was allocated to the 1st Defendant. The offer of an alternative land to the Plaintiff made the suit property available for re-allocation to another government entity.
61. The Court has also considered the contents of the letter from the PS in the Ministry of Works who stated in a letter dated 10th February 1989 addressed to the PS Ministry of Energy as follows:

“An Inter-ministerial committee on Government office accommodation of which this Ministry is member and the Secretary has learnt that the plot which was allocated for office construction has not been developed. There is an acute shortage of open space for office accommodation development, while on the hand, some Government Ministries, Departments and Parastatals have applied for plot allocation.

The Committee mentioned above would want to harmonize the available suitable plots for office accommodation with requests by various Government organizations to be able to determine which organization could be allocated which plot. The committee would therefore be most grateful if it could be informed the latest position in as far as the plot allocated to KPC by the Commissioner of Lands is concerned. Could you therefore let me know whether the plot sought and subsequently allocated is still required or can be released for re-allocation to other need Government Ministries/parastatals.”

Indeed, and true to the fears expressed by the PS in the Ministry of Works in this letter, the Plaintiff opted for another parcel of land in Embakasi being LR No 9042/693 and the suit property was returned to the pool for other public entities.

62. There was also evidence adduced to the effect that pursuant to the request from the Judiciary which needed land within Nairobi for its expansion, the suit parcel was re-surveyed under survey Plan No 307561 and Deed Plan No 307561 dated 12th April, 2010 and subsequently registered as LR No 209/18723 (IR. No 122478), measuring 0.4365 Ha and allocated to the Judiciary. A grant was issued in the name of the Permanent Secretary National Treasury as Trustee of the Judiciary for a period of 99 years from 1st March 2010.
63. While it also emerged that the suit land was allotted to a private entity known as Kenya (RTF) Ltd in the intervening period, this allotment was irregular and was revoked by the Ministry of Lands vide



Gazette Notice No 3460 dated 1st April, 2010. Additionally, the High Court also confirmed that the allocation of the suit land to Kenya (RTF) Ltd was irregular through its Judgment.

64. It was also evident that the allotment of the suit land to the private entity was tabled for discussion in the Cabinet which approved the revocation of the suit land to Kenya (RTF) and allocation to the Judiciary. Subsequently, the title held by Kenya (RTF) Ltd was revoked by the Minister of Lands in February 2010. The revocation was later gazetted on 1st April 2010. In the letter dated 16th February 2009 addressed to the Chief Justice, the Minister of Lands indicated that title to the suit property and other parcels which had been Irregularly allocated to private persons were revoked and the Commissioner of Lands was directed to issue fresh titles to these parcels to the P.S National Treasury as Trustee of the Judiciary.
65. From the testimony that was tendered herein, it was evident that the Petition filed by Kenya (RTF) was against the Permanent Secretary- Ministry of Lands, The Commissioner of Lands, and the Kenya Anti-Corruption Commission and was only in relation to the legality of the allotment to Kenya (RTF) Ltd, and not the legitimacy of the title as between the Plaintiff and the 1st Defendant. The 1st Defendant was not a party to that Petition and had no opportunity to ventilate its claim with respect to the suit property. Indeed, the Learned Judge observed that this was odd at Paragraph 32 of the judgment in Milimani High Court Petition No 61 of 2007 where he states as follows:

“ 32. I have shown above that there is no merit to the Petition before me but I have two other things to say in any event;

- i. The present proceedings had a big lacuna; how come the Kenya Pipeline Company Limited was never enjoined as an Interested Party? It would have been difficult for this Court to make orders in favour of the Petitioner without hearing from it.
- ii. Similarly, in the Petition, a third party who is the present registered owner of the suit land was not enjoined. Even if the Petitioner had any rights to the land, and it has none, how could this Court fairly determine ownership that would affect presently registered interests? In fact, the third party was not named directly but I gather at paragraph 31 of the Petition that it may be the Judiciary of Kenya but nothing was said of its interests at all.”

66. In the circumstances and further being guided by Section 26 of the *Land Registration Act* and the aforementioned cases, it is the finding of this Court that indeed, the 1st Defendant is the bonafide and legal owner of the suit property vide its title dated 13th April, 2010 registered in the names of the Permanent Secretary, National Treasury as a Trustee for the Judiciary.

Issue No II - Whether the title to the suit property is impeachable

67. The Plaintiff while submitting on this issue argued that the Defendants have not presented any evidence before this Court on how the 1st Defendant acquired the suit property save for an alleged Cabinet Resolution acknowledging the growing demand for land in the Upper Hill area by government entities.
68. The 1st and 3rd Defendants while submitting on this issue submitted that the Plaintiff neither pleaded fraud on the part of the 1st Defendant nor did the Plaintiff provide the particulars of fraud on the part



of the 1st Defendant in obtaining the title to the suit property. It was also submitted that the Plaintiff did not prove any fraudulent conduct on the part of the 1st Defendant in obtaining the title.

69. As pointed earlier, it is not in doubt the suit property is registered in the names of the Permanent Secretary, Treasury as a Trustee of the 1st Defendant. It is also evident that the 1st Defendant is in occupation and possession of the said property. Section 24 of the [Land Registration Act](#) stipulates that:

“ 24. Subject to this Act,

- a. The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;

70. Section 25 of the same Act recognized that this right cannot be created unless as provided for under the [Land Registration Act](#). Section 26 of this Act recognizes that this right can be taken away if it is established that registered proprietors obtained the land fraudulently or irregularly.

71. As explained above, a Certificate of title is *prima facie* evidence of absolute and indefeasible unless for the reasons provided under Section 26 of the [Land Registration Act](#). Section 107 (1) of the [Evidence Act](#) required the Plaintiff to lead evidence to support its claim seeking for impeachment of the 1st Defendant's title. The Plaintiff neither pleaded nor proved any fraud on the part of the 1st Defendant. The Plaintiff never lead evidence to this aspect and as such, the Court cannot infer any.

72. The 1st Defendant's witness Joseph Were demonstrated during trial how the suit property which was initially allotted to the Plaintiff for purposes of erecting its Corporate Headquarters as indicated in the Letters of allotment produced by the Plaintiff which was not realized as anticipated. Then, subsequently thereafter and upon request by the 1st Defendant, the land was then re-allocated to the 1st Defendant. The Plaintiff was then in exchange offered another property known as LR No 9042/693.

73. From the evidence that was adduced, the suit property was resurveyed under Survey Plan No 307561 and deed plan No 307561 dated 12th April, 2010 and subsequently registered and issued as LR No 209/19723 (I.R No 122478) measuring 0.4365 Ha for a period of 99 years from 1st March, 2020.

74. In view of the foregoing, it is the finding of this Court that the 1st Defendant's title is entitled to protection of the law. The Plaintiff has not proved any of the grounds set out in Section 26 of the [Land Registration Act](#) to warrant the impeachment of the same. Impeaching the same will also be against the principles of land policy as set out under Article 60 of the [Constitution](#).

Issue No III - Whether the Plaintiff is entitled to the reliefs sought?

75. The Plaintiff sought several reliefs enumerated in its plaint. While the Plaintiff being a public entity is entitled to the protection of its proprietary rights, it is imperative to note that there was no material evidence placed before this Court to warrant the cancellation of the 1st Defendant's title. Equally, from the evidence that was tendered herein, the Plaintiff having accepted the alternative land in exchange of the suit property is estopped from changing its position and seeking to have the suit property. This Court has also pronounced itself to the effect that having established that the 1st Defendant is the bona fide owner of the suit property, there is no other way that this Court can take away without evidence that it was unlawfully acquired. Therefore, it follows that the Plaintiff has failed on a balance of probability to establish that it is deserving of the reliefs sought in its claim. This Court shall proceed to dismiss the Plaintiff's suit.



Issue No IV - What orders should issue as to costs?

76. It is trite law that costs shall follow the event but it is also noteworthy that this Court retains the discretionary rights on award of costs. The 1st and 3rd Defendants are the successful parties and are therefore entitled to costs. However, this Court notes that the dispute herein involved public entities and there is no need in burdening the taxpayers in meeting the costs herein. In the circumstances, this Court shall exercise its discretion and direct that each party to bear own costs of the suit.

Final Orders:

77. The end result is that this Court having carefully considered and analyzed the evidence adduced herein, the Plaintiff has failed to prove its case to the required standard of a balance of probability. For the above reasons, the Plaintiff's claim as contained in the plaint is dismissed in its entirety with an order that each part do bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF FEBRUARY, 2024.

E.K. WABWOTO

JUDGE

In the virtual presence of:

Mr. Wambua h/b for Mr. Omondi for the Plaintiff.

Ms. Kerubo for the 1st and 3rd Defendants.

No appearance for the 2nd Defendant.

Court Assistant: Caroline Nafuna.

