



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 88 OF 2015

ABDI MOHAMED NOORPLAINTIFF

VERSUS

THE COUNTY GOVERNMENT OF TURKANA1ST DEFENDANT

LOJAAM LUQA ENERGY CO. LIMITED2ND DEFENDANT

J U D G E M E N T

INTRODUCTION

1. The Plaintiff brought this suit against the Defendants seeking the following reliefs:-
 - (a) A declaration that the Plaintiff is the lawful owner of **Plot No. 268** situated at **Lokichogio Township** in **Turkana County**.
 - (b) An order of permanent injunction to restrain the Defendants, their servants and or employees or anyone claiming through the Defendants from trespassing on, occupying, constructing or doing anything to interfere with the Plaintiff's quiet possession of **Plot 268**.
 - (c) Damages for trespass/mesne profits
 - (d) Costs
 - (e) Interest on (c) and (d) above.
2. The Defendants were duly served with summons to enter appearance and file defence but they neither entered appearance nor filed defence. The hearing therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

3. The Plaintiff testified that he applied to the then Turkana County Council for allocation of Plot within Lokichogio market. His application was successful and he was allocated **Plot No. 268** which was **8 acres** on 24/9/1992 (suitland). He took possession of the suitland and fenced it. He applied for change of user which was allowed. A part development Plan (PDP) was prepared by the Physical Planning Officer and the same was forwarded to Nairobi for approval.
4. The Plaintiff paid the stand premium in respect of the suitland and continued paying Plot rent to the county Council of Turkana and later to the county Government of Turkana who were the

successors of the defunct county council of Turkana.

5. In April 2015, the County Government of Turkana trespassed into the suitland and started erecting an office block for the County ward Administrator. He protested this action in writing to the County Government of Turkana. The County Government ignored his protests and went on with construction. He came to court and obtained an injunction to stop the the construction but the County Government ignored the injunction order and continued to build the office which is now complete.

ANALYSIS OF EVIDENCE

6. The Plaintiff produced a letter of allotment [**exhibit 1**]. It is clear from this letter of allotment that the Plaintiff was allocated **Plot No. 268 measuirng 8 acres** on 24/9/1992. The Plaintiff was given consent to change the suitland into a commercial plot as per **exhibit 2**. Part Development Plan was duly prepared and forwarded for approval. The PDP was produced as **exhibit 3**. The letter forwarding the PDP to Nairobi was produced as **exhibit 4**. It is dated 24/1/2001.
7. The Plaintiff produced receipts for Plot rent issued to him. Some receipts such as **exhibit 5(a) (b) and (c)** were issued by the County Council of Turkana. There is another receipt [**exhibit 5(d)**] issued by the Turkana County Government. This receipt was issued on 11/5/2015.
8. The Plaintiff produced a letter dated 23/4/2015 addressed to the Ministry of Lands and Urban Development, Turkana County Government. This is the letter in which he complained about the tresspass on to his land. He later went to his lawyers who wrote a letter to County Government of Turkana. The Plaintiff's letter and that of his lawyers were produced as **exhibit 6 and 7** respectively.
9. There was no evidence adduced to controvert the evidence given by the Plaintiff. It is clear from the documents produced that the suit land was allotted to the Plaintiff. He was allowed to change user to a light industrial commercial plot. Even after the County Government had trespassed on to his land, the County Government still continued to receive plot rent from him. It is therefore clear that the County Government still held him as owner of the suitland.
10. The letter of allotment had conditions which were to be fulfilled. These conditions included payment of stand premium, application for approval of development plan and building within 2 years from the date of allocation. The conditions were clear that the plot was to be repossessed and re-allocated if the conditions were not met. Though there is no evidence that all the conditions were met, there is also no evidence that the plot was repossessed and re-allocated to someone else. As matters stand, the sauitland belongs to the Plaintiff. I therefore find that the Plaintiff is the rightful owner of the suitland.
11. When the Plaintiff moved to court for injunction orders, the Defendants had only accumulated building materials on the land. An injunction was given restraining the construction. It would appear that the Defendants ignored the injunction and went on to put up an office building and a separate abulution block. This is as per the photographs produced as exhibit 8(a) (b) and (c).
12. The Plaintiff did not adduce any evidence as to what portion of the suitland has been taken by the Defendants. The building seems to be still undergoing construction. It is not compete and has not been occupied. There was no indication of the value of land in Lokichogio area. It is therefore not possible to assess general of mesne profits. It was incumbent upon the Plaintiff to lay a basis for this. He never did so. I therefore find no basis upon which I can assess either general damages for trespass or mesne profits.

DECISION

13. I find that the Plaintiff has proved his claim to the required standards. A declaration is issued that

the Plaintiff is the lawful owner of **Plot No 268** situated at Lokichogio Township in Turkana County. An order of permanent injunction is hereby given restraining the Defendants, their agents, servants and or employees or anyone claiming through them from trespassing on, occupying, constructing or doing anything to interfere with the Plaintiff's quiet possession of **Plot No. 268**. The Plaintiff's claim for damages fro trespass and mesne profits is hereby disallowed. The Defendants shall pay costs of this suit to the Plaintiff.

Dated, signed and delivered at Kitale on this 18th day of May 2016.

E. OBAGA

JUDGE

In the presence of Mr Teti for Mr Samba for Plaintiff.

Court Assistant – Isabellah

E. OBAGA

JUDGE

18/5/16