



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 63 OF 2015**

**THE TRUSTEES (REGISTERED) ELDORET**

**CHURCHES URBAN PROJECT TRUST**

**FUND:::PLAINTIFF**

**VERSUS**

**THE NATIONAL LAND COMMISSION:::1ST  
DEFENDANT**

**THE COUNTY GOVERNMENT OF UASIN GISHU:::2ND  
DEFENDANT**

**THE LAND REGISTRAR, UASIN GISHU COUNTY:::3RD DEFENDANT**

**RULING**

The Plaintiff is the Registered Trustees Eldoret Churches Urban Project Trust Fund and has brought this matter against the National Land Commission, the County Government of Uasin Gishu and Land Registrar of Uasin Gishu County hereinafter referred to as the 1st, 2nd and 3rd defendants respectively claiming that on or about 22nd February 2994, the plaintiff was allocated a portion of land forming part of LR No. Eldoret Municipality/ Block 14/66 being unsurveyed plot for health a center in Eldoret. The said parcel namely Eldoret Municipality/ Block 14/66 was later sub-divided and plaintiff's parcel was given a new number Eldoret Municipality/Block 14/1653. The parcel of land was allocated to Langas Racecourse Health Centre which is a project that was established and managed by the plaintiff for the benefit of the local community.

According to the plaintiff, the Langas Racecourse Health Centre is a project started by the plaintiff's trustees comprising of a group of churches within Eldoret namely; The Reformed Church of East Africa, The African Inland Church, The Church of God, The Anglican Church of Kenya, The Friends Church, The Pentecostal Assemblies of God and the Inter: Fellowship Church each of the churches being represented by a pastor. The Langas Racecourse Health Centre received the requisite approval from the Eldoret Municipal Council, the predecessor to the County Government of Uasin Gishu and has been running its operation uninterruptedly to date. The Langas Racecourse Health Centre stands on the parcel of land measuring 1.21 hectares and is supported by grants or aids from the National Government of Kenya, Finland, World Vision, and the County Government of Uasin Gishu among other donors. The plaintiff is in the process of acquiring a Certificate of Lease (title over) the parcel of land Eldoret Municipality/ Block 14/1653 though the process has not been completed.

On or about 24th February 2015, the chairman of the 1st defendant the member of the County Assembly (M.C.A) for Langas, the County Executive for Lands, the County Chief Executive officer, Lands and two

County Lawyers attended a public hearing at Eldoret Teachers' Advisory Centre at which meeting the said Chairman of the 1st Defendant declared that the Land held by the plaintiff is public and that the 1st defendant would move to repossess it. The member of the County Assembly (M.C.A.) Langas on behalf of the 2nd defendant also supported the position of the 1st Defendant. The 3rd Defendant has failed to process the title or Certificate of Lease in favour of the plaintiff. The plaintiff's claim against the 1st and 2nd defendants is for a permanent injunction to restrain them, their servants, agents or any other persons whatsoever from interfering with repossessing, converting, alienating, taking over, sub-dividing, leasing canceling the letter of allotment, interfering with the operations of the health project, selling, mortgaging or doing any other thing in any other manner affecting all that parcel of land known as Eldoret Municipality/ Block 14/1653 pending the hearing and determination of this suit. The plaintiff further prays for an order directing the 3rd defendant to issue a certificate of lease over the parcel of Land Eldoret Municipality/ Block 14/1653 to the plaintiff.

The plaintiff and its members attended the meeting held by the 1st defendant on 24th February, 2015 but were not given adequate time to state and prove their stake over the said parcel of land. The 1st defendant advertised the plaintiffs' parcel of land in the daily newspapers prior to the meeting at Eldoret aforementioned thereby portraying to the public that the plaintiff illegally owns the land.

The main prayer in the plaint is an order directing the 3rd defendant to issue a certificate of lease over the parcel of land known as Eldoret Municipality/ Block 14/1653.to the plaintiff and costs of the suit.

The suit is accompanied with an application dated 5/3/2016 wherein the plaintiff prays that there be orders of temporary injunction restraining the 1st and 2nd defendants/respondents, their servants and or agents or any other persons whatsoever from interfering with, repossessing, converting, alienating, taking over, sub-dividing, leasing, canceling letter of allotment, interfering with the operations of the health project, selling, mortgaging, or doing any other thing in any way affecting all that parcel of land known as Eldoret Municipality/ Block 141653 and that there be an order compelling the 3rd defendant/ Respondent to issue a certificate of lease over Eldoret Municipality/ Block 14/1653 and that costs of this application be provided for.

Which application is based on grounds that the Plaintiff/ Applicant was legally allocated the plot by the Commissioner of Lands in 1994 and duly paid the allotment charges. The allotment was issued in the name of Langas Racecourse Health Centre which is a project run and managed by the plaintiff. The plaintiff is a registered trust running the health project for the local community. The project is donor and Government aided and is run by trustees. The Plaintiff/Applicant is in the process of acquiring the Certificate of Lease. The 1st Defendant/ Respondent made a public statement in Eldoret on 24th February 2015 through its Chairman that it intends to repossess the land. This was made in the presence of the County Government representatives. The 2nd Defendant/Respondent through the Member of the County Assembly (M.C.A.) Langas has also made several attempts to take over the project as was made clear on 24th February 2015 in a meeting with the 1st Defendant/ Respondent where he supported the sentiments of the National Land Commission Chairman. The interference by the 1st and 2nd defendants/ respondents is affecting the operations of the health project and is likely to make donors stop extending aid to the local community. The plaintiff is entitled to acquire the title over the land as of right.

The application is supported by the affidavit of **Bishop Thomas Kogo**, the head of the Anglican Church of Kenya who states that various churches came together in 1994 to put up a health facility to serve the local community in Eldoret and started the Eldoret Churches Urban Project Trust Fund to run the project. The project Trust Fund applied for allocation of land from the Government of Kenya and was allocated a parcel of land comprising part of L.R. No. Eldoret Municipality/ Block 14/66 which was issued to Langas Racecourse Health Centre a project of the churches. The same was unsurveyed but later was surveyed and parcel No. Eldoret/Municipality/Block 14/1653 created. The remainder was allocated to Langas Police Station thus Eldoret Municipality/ Block/1654. They were authorized by the Provincial Administration as it was then to set out the health project forthwith.

The project paid survey fees and the parcel was surveyed. The project has received approval of various government departments and receives donor funds. The trust has been working well with the local

community and the government. However, on 24th February 2015, the National Land Commission, M.C.A. Langas ward and the Uasin Gishu County Executive for lands, Chief Executive Officer and two county lawyers have alleged that the land does not belong to the Trust.

The plaintiff specifically blames the National Lands Commission Chairman for starting the process of repossession without giving the plaintiff a hearing. The chair is accused of bias as the police station has not been treated in a similar manner and yet they are in possession of Eldoret Municipality/ Block 14/1654 which measures about 5 acres. The plaintiff is apprehensive that the 1st Defendant is in the process of repossessing the land despite the plaintiff project being beneficial to the county and prays for restraining orders.

The 2nd Defendant filed a replying affidavit stating that the applicant never applied for allocation of the disputed land as the land was allocated to Langas Racecourse Health Centre which is a public utility. According to the 2nd defendant, the plaintiff was the administrator of Langas Racecourse Health Centre but was not the legal owner thereof. It is the 2nd defendant's contention that the plaintiff is mandated to carry on the project on benefit of the community and are not the owners of the public land in issue. According to Mr. Patrick K. Mutai, the National Land Commission, the National Land Commission heard the dispute and is yet to come up with a resolution.

The 2nd defendant also filed a notice of motion on 27th March 2015 praying for orders that there be stay of proceedings of this suit pending the findings and determination by the National Land Commission with regard to Eldoret Municipality/ Block 14/66 on grounds that section 14 of the National Land Commission Act empowers the national Land Commission to carry out review of grants and disposition. The review was carried out on 24th February 2015 on the suit plot at Eldoret Social Hall in the presence of the plaintiff and the 1st defendant and 2nd defendant and that the findings and ruling are yet to be released.

The application is opposed by the Plaintiff/ Respondent on grounds that the application is malicious and frivolous. He stated that the land in dispute is private and not public. The facts in the replying affidavit of Bishop Thomas Kogo filed on 14th April 2015 are a replica of the supporting affidavit in the application filed on the 5th March 2015.

On the application dated 5th March 2015, the plaintiff submits that the contention is whether the parcel of land is private or public. Thus, if the land is public then the National Land Commission has powers to review the grant and disposition of the same. However, if it is private then the National Land Commission has no power to review. The applicant has extensively submitted on Article 62 of the Constitution, Section 2 of the Land Act 2012, Section 67 of the Constitution and Article 68 of the Constitution of Kenya.

**Mr. Miyienda** submits that since Eldoret Municipality/ Block 14/1653 is private land, it falls outside the mandate and power of the National Land Commission. Accordingly, he submits that the application dated 5th March 2015 must be allowed and the application dated 25th March 2015 must fail.

The 2nd defendant in response submits that the plaintiff has not demonstrated that they are registered proprietors of the subject land as the letter of allotment indicates that the property is registered in the name of Langas Racecourse Health Centre which is a public entity. No evidence has been brought to court that the Health Centre is a project of the plaintiff. Moreover that the plaintiff has not demonstrated that he is likely to suffer irreparable harm if injunction is not granted as decision of the National Land Commission had not been made.

On balance of convenience, the 2nd defendant argues that it tilts towards not granting the order as the decision of the National Land Commission is yet to be made and that the plaintiff will have the right to challenge the decision if made against him. In regard to the application made on 25th March 2015 the 2nd defendant argues that the plaintiff participated in the proceedings of the National Land Commission and that the National Land Commission is yet to make a determination.

This court is being asked to determine whether the plaintiff has presented a *prima facie* case with a

probability of success ; whether irreparable injury would result if the injunction was not granted and whether there was evidence that the balance of convenience was in favour of the 1st respondent. See **Giella V. Cassman Brown** [1973] EA 358.

I have considered the two applications and the evidence on record and rival submissions by the counsel and do find that on the 22nd April 1994, a letter of allotment was issued to Racecourse Health Centre for an unsurveyed plot for the construction of a health centre wherein the stand premium to be paid was Nil. The conditions on the allotment letter was that the allottee was to make an acceptance within 30 days and a payment of Kshs.2,870/- was to be made. I have not seen any grant that was issued by the government to the Langas Racecourse Health Centre. Moreover, the letter of acceptance of the offer by allotment has not been shown to the court. Though there is evidence that Kshs.2,870 was forwarded to an advocate for purposes of paying the amount stated in the letter of allotment. There is no evidence that the same was paid to the ministry of lands. Due to the fact that there is no the grant and any document of title this court infers that the property is **unalienated** and the fact that the offer could have lapsed after expiry of 30 days, the said land could still be under the mandate of the National Land Commission for purposes of allocation. It is trite law that an allotment letter is not a title but is an offer by the court which should be accepted within its conditions.

However, I have seen the communication between the then lawyer, Eldoret Urban Project and the Municipal Council of Eldoret which indicate that the predecessor of the 2nd defendant was aware that the allotment letter was issued to Racecourse Health Centre a project of the plaintiff. The special meeting at the Eldoret Children's Urban Project Development held at the D.C's office Eldoret on 1st August 1994 resolved that the project be changed from Langas Racecourse Health Centre to Eldoret Churches Urban Project thus the Commissioner of Lands was to be duly advised of the change of name and address from "Langas/Racecourse Health Centre" Box 40 Eldoret to "Eldoret Church's Urban Project" Box 4843 Eldoret. That there were to be seven Trustees to constitute the Eldoret Churches Urban Project Development Fund. The seven Trustees representing each of the following organizations, endorsed by the meeting were:

- Reformed Church of East Africa (RCEA)
- African Inland Church (A.I.C)
- Church of the Province of Kenya (CPK)
- Church of God (COG)
- Friends Church (Quakers)
- Pentecostal Assemblies of God (PAG)

The Eldoret Municipal Council was to be involved at the operational level in accordance with the articles of the Trust Fund, but shall neither sit nor appoint a nominee on the Board of Trustees. The DC assured the Zonal Manger WVK that there was no course to fear as the plot belonged to Eldoret Churches Urban Project. The DC undertook to commit himself in writing that the plot is available for development by the Eldoret Churches Urban Project and the work should start as soon as possible without further delay. On the 2nd August 1994, the then DC Eliud Parsekel wrote to World Vision of Kenya requesting that they make arrangements for the starting of the construction works for the Eldoret Churches Urban Project.

Due to the foregoing, this court finds that though the allotment letter does not mention the Trustees (Registered) Eldoret Churches Urban Project Trust Fund, the minutes of the meeting held on 1st August 1994 at the letter of the DC together with various correspondences are evidence that the plaintiff has demonstrated that she has an equitable interest in the property as the allottee and therefore has **established a prima facie case that can be tested in court.**

On irreparable loss, I do find that the plaintiff has established that if the order sought is not granted, then he is likely to suffer loss that cannot be compensated in damages as he offers Medical services that cannot be quantified in terms of damages.

Lastly, the balance of convenience tilts towards granting the injunction as the project is on course. I did not have the benefit of the participation of the 1st Defendant in these proceedings. They were served but

did not file any document and did not attend court.

I have considered the submissions by the honorable Attorney General and do find that though the plaintiff has not come up clearly to show his capacity as a person registered and incorporated in Kenya, he has demonstrated on prima facie basis that he was recognized by the Municipal Council of Eldoret and the Provincial Administration as it then was. Furthermore, some of the issues raised by Mr. Wabwire learned state counsel, can be determined after substantive hearing but not at this stage of the application for injunction.

The upshot of the above is that this court grants a temporary injunction restraining the 1st and 2nd defendants/respondents, their servants and or agents or any other persons whatsoever from interfering with, repossessing, converting, alienating, taking over, sub-dividing, leasing, canceling letter of allotment, interfering with the operations of the health project, selling, mortgaging, or doing any other thing in any way affecting all that parcel of land known as Eldoret Municipality/Block 141653. That there be an order restraining the 3rd defendant/respondent from issuing a certificate of lease over Eldoret Municipality/Block 14/1653 until hearing and determination of the suit and that costs of this application be in the cause.

**DATED, SIGNED AND DELIVERED THIS 3RD DAY OF JUNE, 2016.**

**ANTONY OMBWAYO**

**JUDGE**