



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO.48 OF 2013**

**SAMUEL KIPNGENO LETTING .....PLIANTIFF**

**VERSUS**

**EZEKIEL TONUI .....DEFENDANT**

**JUDGMENT**

*(Suit by plaintiff claiming that he is entitled to certain land which is registered in the name of the defendant; allegation that defendant obtained title fraudulently; land distributed by Government to displaced persons; plaintiff claiming that the land was allotted to him and not defendant; no documentary proof that the land was allocated to the plaintiff; plaintiff not producing the list of beneficiaries or any register to prove this; defendant having a letter of allotment and title deed; plaintiff failing to prove that the defendant's title was acquired fraudulently; plaintiff's case dismissed with costs)*

1. This suit was commenced by way of plaint filed on 30 August 2010. In his plaint, the plaintiff has pleaded that he was, and is, the legal owner of the land parcel Nakuru/Baraget Settlement Scheme/669 having been allocated the same in the year 1999 by the Land Allocation Committee and that his name was duly entered in the register at Keringet District Officer's Office. He has pleaded that upon allocation, he and his family took possession of the land and extensively developed it as they awaited issuance of the title deed. It is pleaded that in the year 2002, the Committee went around a screening exercise and they confirmed the plaintiff as the proper allottee of the suit land. It is pleaded that in the year 2003, the defendant without any colour of right sought to invade the suit land on the strength of an illegally and fraudulently acquired title. The following particulars of fraud are pleaded against the defendant :-

*(a) Obtaining title to the suit land when the same had legally and procedurally been allocated to the plaintiff.*

*(b) Obtaining the title deed to the suit land when the plaintiff and the entire family were in occupation.*

*(c) Obtaining the title deed when his name did not feature in the Land Allocation Committee's Register.*

2. The plaintiff pleaded that the dispute has been before the Land Dispute Tribunal and the Appeals Committee but these had no jurisdiction.

3. In the suit, the plaintiff has asked for the following orders :-

*(a) A declaration that the plaintiff is the lawful owner of title No. Nakuru/Baraget Settlement Scheme/669.*

*(b) That the defendant's title to parcel No. Nakuru/Baraget Settlement Scheme/669 be cancelled and a fresh one be issued in the name of the plaintiff.*

*(c) A permanent injunction restraining the defendant whether by himself, his employees/servants/agents from interfering with the plaintiff's quiet possession and occupation of the suit land.*

*(d) Costs and interest thereon.*

3. In his statement of defence, the defendant refuted all the allegations of the plaintiff. He averred that it is actually the plaintiff who is denying him quiet and peaceful enjoyment of his property. He also pleaded that it is the plaintiff who initiated the proceedings before the Land Disputes Tribunals and that the awards were in his (defendant's) favour.

4. In his evidence, the plaintiff testified that he has been resident in Baraget Settlement Scheme since the year 1999. Previously, he was living in a camp in an area called Simotwet after having been displaced by clashes in Lare area. He testified that his name was included in the list of allottees. He lived on the suit land and developed it. However in the year 2003, the defendant came and claimed that the land was his. He testified that they proceeded to the office of the District Officer and it was confirmed that the name against the land was the plaintiff's. He stated that the defendant's name is not in the register but he now has a title deed to the land. He testified that he filed suit before the Land Disputes Tribunal in Olunguruone which decided in his favour. In cross-examination, the plaintiff testified that he was not given an allotment letter. He however insisted that the defendant got title by fraud. He stated that if the land was genuinely that of the defendant, he would have come earlier to the land. He testified that it is him who lives on the land with his brother and nephew. He admitted selling 1/2 acre of it to one of his brothers in the year 2014.

5. PW - 2 was one Benjamin Chepkoimet Chepchieng. He is also a resident of Baraget Settlement Scheme. He testified that in the year 1999 the Government allotted them land in the Settlement Scheme. They chose a Committee of 18 persons to identify those affected and he was among them. In the year 2005, he was Chair of the Committee. He testified that the plaintiff was among the internally displaced persons (IDPs) from Lare area. He testified that the settlement officer compiled a record and that it was the plaintiff who was allotted the suit land. He testified that he has been on the land to date. In cross-examination, he was challenged to produce a document to show that the plaintiff was allotted the land but he had none. He was aware that the defendant had title to the land but thought that he may have acquired it fraudulently.

6. PW - 3 was Paul Rop also a resident of Baraget. He too was among the Committee members appointed by the community. He testified that there was a register that was prepared under the direction of the District Officer. After persons were settled, the Committee went round to identify those on the ground and verify their settlement. This exercise was termed as "capturing". After this process, a register was prepared for purposes of issuing titles. Titles were then issued in the year 2005 by the former President Kibaki. He testified that when they went round, they found the plaintiff on the ground and he was "captured" in the register. In cross-examination, it was revealed that he had not carried the register.

7. PW -4 was John Kipkoske Kitur. He testified that he was also a Committee member and he served as Vice Chairman. He knew the plaintiff as one of the IDPs and he stated that the plaintiff was allotted the suit land.

8. With the above evidence, the plaintiff closed his case.

9. On his part, the defendant testified that he got the land in the year 2000 and was issued with an allotment letter, the original of which he produced as an exhibit. He got his title deed on 12 October

2005 and he also produced it as an exhibit. He testified that he paid the sum of Kshs. 7,000/= for the title deed and he produced the receipts as exhibits. He stated that he built a house in the year 2001 but the plaintiff destroyed it. He did not want to get into a fight and he reported to the District Officer. The plaintiff then filed a case at the Land Disputes Tribunal which held in favour of the plaintiff. The defendant appealed to the Appeals Committee successfully. Despite losing the case, the plaintiff refused to move out of the property and proceeded to sell some of it.

10. In cross-examination, he stated that he came into Baraget in the year 2001. He found the plaintiff on the land allotted to him.

11. DW- 2 was Joshua Kipkoech Tanui a resident of Baraget. He testified that the defendant was also a squatter since 1989. He stated that the defendant was allotted the land and later issued with a title deed. He stated that the land was first vacant when it was given to the defendant. He stated that currently there are other persons on the land who have either bought or leased from the plaintiff.

12. With the above evidence, the defendant closed his case.

13. Mr. Magata for the defendant chose not to make any submissions on the matter. On the other hand, Ms. Njoroge for the plaintiff submitted inter alia that it is the plaintiff who was allocated the suit land. She invited me to look at the list of beneficiaries, a letter to the District Commissioner, and the oral evidence of the plaintiff's witnesses. She submitted that the defendant has not proved how he came to be an allottee of the suit land as he was not in the original list of beneficiaries of 1999. She submitted that the plaintiff is entitled to the order of permanent injunction against the defendant. She also submitted that the title of the defendant was not obtained lawfully and is therefore null and void. She submitted that the defendant has not supplied to the court a certified copy of the search for the title. She further submitted that the defendant has not proved that consent of the Land Control Board was obtained before subdivision of the land. She was of the view that the defendant's title should be cancelled as it was fraudulently obtained. She relied on various authorities which I have taken note of.

14. I have considered the matter. The plaintiff's case is that he is the person who is lawfully entitled to the suit land. 15. From the evidence tendered on behalf of the plaintiff, it is asserted that the plaintiff was the person allocated the suit land and that this was demonstrated in a list of beneficiaries. It was averred that it is the plaintiff's name which was entered against the title herein. Unfortunately, the plaintiff did not produce the said list of beneficiaries as an exhibit. There was also mention of a register where the plaintiff's witnesses stated that the plaintiff's name was entered. This register was also not produced by the plaintiff. In fact, the plaintiff produced absolutely no document to demonstrate that he was the person who was supposed to be allotted the suit land. Allotment of land is certainly done through documentation as acknowledged by the plaintiff and his witnesses. It was incumbent upon the plaintiff to exhibit these documents to prove that indeed he was the proper allottee of the suit land and that the title of the defendant was therefore obtained fraudulently. The plaintiff did not, and I cannot see how the plaintiff can succeed. Ms. Njoroge invited me to look at a certain list but the list was never produced as an exhibit and I do not see how I can make reference to it.

16. On the other hand, the defendant did produce a letter of allotment dated 15 January 2001, showing that the suit land was allotted to him. The letter was written by the Provincial Land Adjudication and Settlement Officer. The defendant did produce receipts showing that he paid for the issuance of title to him. He did avail the original Title Deed to the land. The plaintiff has not displayed any material which would lead me to the conclusion that the defendant's title is not a good title. The burden of proof was on the plaintiff and he has hopelessly failed to bring forth any material that would lead me to the conclusion that the defendant's title is fraudulent. The arguments by Ms. Njoroge that the defendant has not availed a consent of the Land Control Board, or a Certified search certificate are completely irrelevant. What is material is that the plaintiff has not tendered sufficient evidence to demonstrate that the defendant's title is a bad title.

17. I really do not see the point of saying any more as the evidence on record speaks for itself. There is absolutely no merit in the plaintiff's suit and it is hereby dismissed with costs.

18. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 22<sup>nd</sup> day of September 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Mr. Ngamate holding brief for Mr Kariuki for plaintiff

Mr. Magatta present for defendant

CA: Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT AT NAKURU**