



**Wetindi v Mwangi & 2 others (Environment and Land Appeal
9 of 2022) [2024] KEELC 768 (KLR) (19 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 768 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL 9 OF 2022
MN GICHERU, J
FEBRUARY 19, 2024**

BETWEEN

PATRICK WETINDI APPELLANT

AND

DANIEL MUINDI MWANGI 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

COUNTY GOVERNMENT OF KAJIADO 3RD RESPONDENT

JUDGMENT

1. This judgment is on the appeal by Patrick Wetindi, the appellant, against the decision by the National Land Commission, Kajiado, in which the first respondent Daniel Muinde Mwangi, was found to be the owner of L.R. Noonkopir Trading Centre Residential B371 which land was also claimed by the appellant.
2. Dissatisfied with the decision of the National Land Commission the appellant filed a memorandum of appeal dated 16/2/2022 seeking three orders as follows.
 - a. The ruling dated 13/2/2019 be set aside and the appellant be deemed to be the owner of Plot No. 1673 Residential Noonkopir Trading Centre (New No. B371 Noonkopir).
 - b. A permanent injunction be issued restraining the respondents, their agents or servants from interfering with the appellants peaceful occupation of the aforementioned plot.
 - c. That the respondents be ordered to pay damages for demolishing the appellants house.
3. The memorandum of appeal has the following six grounds.
 - i. That the County Coordinator Kajiado and her committee did not have jurisdiction to entertain the purported dispute.



- ii. The appellant was not afforded a fair hearing.
 - iii. The County Coordinator and her committee did not consider all or any evidence before reaching the decision that they did.
 - iv. The County Coordinator and her committee failed to consider the fact that the dispute had already been determined in favour of the appellant.
 - v. The dispute, if any, was time barred.
 - vi. The county Coordinator Kajiado and her committee acted in excess of their jurisdiction.
4. The appellant filed a record of appeal which contains the following.
- a. Copy of letter dated 13/2/2019.
 - b. Copy of map showing various numbered plots.
 - c. Copy of letter dated 8/10/2012.
 - d. Copy of letter dated 12/10/2012.
 - e. Copy of letter dated 3/5/2012.
 - f. 12 black and white photographs showing a demolished structure made of steel, glass, iron sheets and timber.
5. The 1st respondent filed what he calls a replying affidavit which is undated in which he gives a history of the suit premises. Annexed to the affidavit is an allotment letter dated 15/12/2003 in the name of Kelvin Kihoro who sold the suit land to Christine Kamba Kivusa who sold it to the 1st respondent. There is also a certificate of official search dated 13/8/2015 showing the 1st respondent as the owner of L.R. 1557 Noonkopir. Other annexures include transfer forms from Kelvin Kihoro to Christine Vamba and then to the 1st respondent.
6. Counsel for the parties filed written submissions on 3/7/2023 and 2/10/2023 respectively. The appellant's counsel identified the following issues for determination.
- a. What is the jurisdiction of the National Land Commission?
 - b. Does the National Land Commission have jurisdiction to revoke titles to land even where it finds, after an inquiry, that such title was irregularly or illegally acquired?
 - c. Was the appellant granted a fair hearing?
 - d. Is the appeal herein time barred?
- Counsel for the 1st respondent identified the same issues and added one more namely,
- e. Whether the court should revoke the title of the 1st respondent?
7. I have carefully considered the entire appeal including the grounds, the record, the affidavit by the 1st respondent, the submissions, the issues raised therein and the law cited. I make the following findings on the issues raised by counsel for the parties.

On the first issue, I find that the National Land Commission has jurisdiction to deal with a dispute relating to a case such as this. This case concerned what is called double allocation whereby one piece of land is allocated to more than one person. The allocating authority was the predecessor of the County



Government, the County Council of Kajiado. That is the same authority to determine who between any two disputants is the lawful owner of the land in dispute.

Under Article 62(2) of *the Constitution*, it is provided as follows.

“Public land shall vest in and be held by a County Government in trust of the people resident in the County, and shall be administered on their behalf by the National Land Commission...”

It is my finding that resolving a dispute as to who between the appellant and the 1st respondent was the lawful allottee of the suit land is part of the administrative mandate of the National Land Commission under 62 (2) of *the Constitution*. It is also a full time mandate. Under Article 159 (2) (c) of *the Constitution* it is provided as follows.

“In exercising judicial authority, the courts and the tribunals shall be guided by the following principles.

- c. Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be provided, subject to clause (3).

The courts, in the above provision of *the Constitution* are being commanded to promote Alternative Justice Systems. The National Land Commission is also under Article 67 (2) (f) of *the Constitution* of Kenya commanded,

“To encourage the application of traditional disputes resolution mechanisms in land conflicts”.

Both the word and the spirit of *the Constitution* encourage the resolution of land disputes in the way the 2nd respondent dealt with this case.

8. On the second issue, I find that the appellant has not proved that he was not given a fair hearing. It was incumbent upon him to prove that he was not given a fair hearing. Going through the record of appeal I find nothing to suggest that the proceedings were flawed. The 1st respondent has annexed a letter dated 3/5/2017 addressed to the appellant inviting him to a meeting on 11/5/2017 at 10.00 am where he was asked to avail his ownership documents (photocopies and originals). Prima facie, that was a fair process.

Under Section 6 of the *National Land Commission Act* (Act No. 5 of 2012) it is provided at (3) (c) as follows.

“In the exercise of its powers and the discharge of its functions, the commission,
(c) is not bound by the strict rules of evidence”.

The appellant has not particularized any incidents that would show that he was not afforded a fair hearing.

9. Regarding the third issue, I find that the National Land Commission has no power to revoke title to land. In this case, no title was revoked because none had been issued to the parties. The appellant has not annexed any document of title in his name or in the name of the person who may have sold him the plot in dispute. What I have seen are two photo copies of transfer forms. There is not even a letter of allotment. Those two photocopies of transfer forms are not title documents. As I have said earlier,



the 2nd respondent simply made a declaration that the suit land was allocated to the first respondent and not to the appellant. This was within its constitution mandate.

10. On whether the appeal is time barred, I am not sure. This is because apart from the affidavit by the 1st respondent, I have no information as to what really transpired in the case yet, it was upon the appellant to file evidence as to what happened. While the submissions run into ten pages, the record of appeal, excluding the photographs, is only seven pages which do not say anything about what happened before the National Land Commission. This is what creates uncertainty as to whether the appeal is time barred.
11. On the final issue of whether the court should revoke the title deed of the 1st respondent, I find no reason for doing so. From the material I have seen in these proceedings, it seems to me that the 1st respondent has a better claim to the land in dispute than the appellant. This is because the 1st respondent can trace the ownership of the land to an allotment letter dated 15/12/2003 and issued to Kelvin Kihoro who transferred the land to Christine Kivusa who transferred it to the 1st respondent. The appellant does not seem to have such concatenation of events leading to the letters of transfer that he has filed.
12. For the above stated reasons, I find no merit in the appeal and I dismiss it with costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 19TH DAY OF FEBRUARY 2024.

M.N. GICHERU

JUDGE

