



**Lenana Phamaceuticals Limited v County Government of Kajiado (Environment & Land Case 590 of 2017) [2024] KEELC 1370 (KLR) (12 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1370 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 590 OF 2017**

**MN GICHERU, J  
MARCH 12, 2024**

**BETWEEN**

**LENANA PHAMACEUTICALS LIMITED ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF KAJIADO ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff seeks the following reliefs against the defendant.
  - a. A permanent injunction restraining the defendant, its employees, agents, servants and/or officers from demolishing or in any way interfering with the quiet possession enjoyed by the plaintiff over all that parcel of land known as plot 14-Business in Kitengela Township pending the hearing and determination of this suit.
  - b. An order directing the defendant to issue a title deed in respect of plot 14 in favour of the plaintiff as appears on the approved physical development plan No. 9 dated 30/10/1992.
  - c. Costs.
  - d. Any other relief that this court will deem fit to grant.
  - e. Interest on (c) above.

This is as per the plaint dated 6/8/2014.

2. The plaintiff's case is as follows. It owns plot 14 –Business inclusive of a 6 metre unused dead end reserve having bought the same from the original allottee, one Benjamin K. Kibiku. The original allottee was allocated the plot on 14/10/1977 by the then Olkejuado County Council. On 2/9/1999 he applied to County Council for an extension of the suit land to incorporate the unused piece of



land which was adjacent. The County Council requested the Director of Physical Planning to take the necessary steps to actualize the application.

The original allottee complied with all the necessary conditions set by the Director of Physical Planning. In the end, the PDP incorporating the 6 metre extension to the plaintiff's land was gazette in the year 2000. When the plaintiff bought the suit plot, the process of acquiring the 6 meters extension was complete. On 20/9/2000, both the plot and the extension were transferred to the plaintiff.

In the year 2005, the plaintiff applied to the County Council for approval of its planned development on the suit plot. The council duly approved the application and the plaintiff developed the plot as per the approval. In the year 2014, the officers of the defendant visited the suit land and threatened to demolish the structures thereon. This is what prompted the plaintiff to file this suit.

3. In support of its case, the plaintiff filed the following evidence.
  - a. Witness statement by one of its directors by the name James Karimi Wambugu dated 6/8/2014.
  - b. Copy of minutes of full council meeting of 26/11/1977.
  - c. Copies of letters dated 2/9/1999, 25/10/1999, 5/11/1999 and 25/2/2000 by the clerk to council and Director of Physical Planning.
  - d. Copy of approved transfer of land dated 20/9/2000.
  - e. Copy of approved physical development map by commissioner for lands.
  - f. Copy of letter dated 24/8/2005 by clerk to council.
  - g. Copies of receipts showing payment of rates to the defendant's predecessor.
  - h. Copy of valuation report.
  - i. Copy of letter of allotment dated 16/9/2019.
4. The defendant, through counsel on record, filed a written statement of defence dated 18/9/201 in which it generally denies the plaintiff's claim. In addition, it avers as follows.

Firstly, the plaintiff is not the bonafide owner of the suit land and it acquired it illegally.

Secondly, it rushed to construct on the disputed extension after it was issued with notices of demolition with the aim of making a claim for compensation.

Thirdly, the defendant cannot be compelled to compulsorily acquire their own land which was reserved for road construction. For the above and other reasons, it prays for the dismissal of the plaintiff's suit with costs.
5. At the trial on 9/11/2021 and 31/10/2023, only two witnesses testified. They included a director of the plaintiff and a valuer. The defendant did not call any witnesses. No witness for the defendant had recorded a witness statement.
6. Counsel for the plaintiff filed written submissions and identified two issues for determination as follows.
  - a. Whether a permanent injunction should issue as per prayer (a) of the plaint dated 6/8/2014.
  - b. Whether the order should issue to the defendant as per prayer (b) of the same plaint.No submissions were filed by the defendant's counsel.



7. I have carefully considered the evidence adduced by the plaintiff including the witness statements, documents and testimony at the trial. I have also considered the written submissions including the issues and the law cited in the submissions. I find that the real issue for determination is whether the plaintiff ever lawfully acquired the six (6) metre extension of the road reserve. If it did, then it will be easy to see which of the five (5) prayers in the plaint commend themselves for granting.
8. Section 114 (1) (c) of the 1969 *Constitution of Kenya* (now repealed) defined trust land as follows.

Land situated outside the Nairobi area (as it was on 12<sup>th</sup> December, 1964) the freehold title to which is registered in the name of a county council or the freehold title to which is vested in a county council by virtue of an escheat.

Provided that Trust Land does not include any estates, interests or rights in or over land situated in the Nairobi area (as it was on 12<sup>th</sup> December 1964) that on 31<sup>st</sup> May 1963 were registered in the name of the Trust Land Board under the former Land Registration (special areas) Ordinance”.

Then Section 115(1) of the same Constitution provides.

All Trust Land shall vest in the County Council within whose area of jurisdiction it is situated”.

At the time of allocation of the suit land to Benjamin Kibiku and sale of the same to the plaintiff, it is the repealed Constitution that was the applicable law in acquisition of Trust Land. Section 7 of the *Trust Land Act* provides elaborate procedure including publication of a notice in the Gazette in case of acquisition of Trust land. The question that the plaintiff should answer is whether it, or the original allottee complied with the procedure set out in the *Trust Land Act* (Cap 288) before purporting to acquire the 6 metre road reserve.

Under Sections 107 and 108 of the *Evidence Act*, it is the plaintiff that bears that burden because if it failed to discharge it then its case would fail. In cross examination by Mr. Abdi Noor, counsel for the defendant on 9/11/2011, the plaintiff’s director said he did not have any Gazette Notice. It is worth noting that the letter of 5<sup>th</sup> November 1999 on the “Extension of Plot No. 14B – Noonkopir Trading Centre had the following conditions. It said in part.

”This is to authorize you to prepare a PDP showing the above proposal provided that;

1. By doing so you will not be blocking access to the rear plots or,
2. There exists an alternative access to the rear plots.
3. That the Olkejuado County Council will have no objection to the above proposal and that they will provide Council Minutes communicating the Council’s decision on the same.
4. That the PDP will be circulated for comment in the normal manner.

There is no evidence adduced by the plaintiff to prove that all the above procedures were complied with. There is no evidence of an alternative access to the rear plots, non blockage of the access to the rear plots and circulation of the PDP for comment. In fact, the letter of 5/11/1999 calls the request for extension a proposal. There is no official letter calling the proposal an approval and categorically saying that extension is part and parcel of Plot No. 14-Business.

The plaintiff has not produced a lease certificate to prove that it owns Plot No. 14 – Business together with the extension. Such a document would show the size of the plot, its dimension and an official map.



Without these basic documents, I find that the plaintiff's case is not proved to the required standard and I dismiss it with costs to the defendant.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 12<sup>TH</sup> DAY OF MARCH 2024.**

**M.N. GICHERU**

**JUDGE**

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