



**Ongete v Chief Land Registrar; Nairobi City County (Interested Party) (Environment & Land Petition 5 of 2023) [2024] KEELC 3341 (KLR) (23 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3341 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION 5 OF 2023**

**JA MOGENI, J  
APRIL 23, 2024**

**BETWEEN**

**ABUODHA JOSEPH ONGETE ..... PETITIONER**

**AND**

**CHIEF LAND REGISTRAR ..... RESPONDENT**

**AND**

**NAIROBI CITY COUNTY ..... INTERESTED PARTY**

**JUDGMENT**

1. The Petitioner through a Petition dated 15/03/2023 prays for various reliefs being as follows: -
  - a. A declaration that the Petitioner’s right to property, the right to a fair administrative process the right of access to justice, and the right to legitimate expectation has been breached.
  - b. A declaration that the Respondent has violated the national values and principles of accountability, transparency and accountability.
  - c. An order of Mandamus compelling the Respondent to immediately register or cause to be registered the subdivisions and issuance of 399 title deeds in respect of L.R NO. 1153/14 and 11531/4/3 in the name of the Petitioner.
  - d. In the event of the failure of the Respondent to comply with the orders of this Court, the Petitioner to report back to Court within 90 days for purposes of this Court to issue necessary and appropriate orders compelling the Respondent to undertake actions necessary for fulfilling the orders of this Court.
  - e. Damages to be awarded to the Petitioner for breach of his rights and fundamental freedoms.
  - f. Costs of the suit and interest thereon.



### **The Petitioner's Case.**

2. The Petitioner's case is set out in the petition, the supporting affidavit and the Petitioner's submissions filed in court. In summary, the petitioner asserts that they obtained a letter of allotment from the Nairobi City Council on 2/07/1998 for property known as LR No. 11531/4/3 and 11531/4/3. They complied with all conditions, paid annual rates, and received approval for development permission on 30/01/2015. A lease was drawn between the petitioner and the Interested Party on 10/06/2016, and stamp duty was paid. Further, on 5/11/2016, the City Council of Nairobi caused the lease of LR No. 11531/14 Ruai to be registered in the Petitioner's name.
3. The petitioner began the process of amalgamation and subdivision of the property and received approval from the Survey of Kenya and the Ministry of Lands. They received a notification of subdivision on 15/02/2019, requiring them to surrender the original title, submit a new deed plan, and pay fees. Despite fulfilling all requirements, the petitioner has not received the 399 title deeds promised by the Respondent. They have made several inquiries and visits to the Ministry of Lands headquarters but have not received cooperation or a response from the Respondent.
4. The Petition is opposed by the Nairobi City County, the Interested Party through a Statement of Defence dated 4/07/2023.
5. When the Petition came up for directions on 23/01/2024, the parties' advocates agreed that the petition be canvassed by way of written submissions and a judgment date was reserved.

### **Respondent's Case**

6. The Respondent did not participate in these proceedings. They did not enter appearance or file any response to the Petition.

### **Interested Party's Case**

7. The Interested Party filed a Statement of Defence dated 4/07/2023 in opposition to the Petition. From the outset, the Interested Party stated that the Petition dated 15/03/2023 discloses no reasonable and actionable cause of action against it. Article 40 of *the Constitution* of Kenya provides that every person has the right, either individually or in association with others, to acquire and or own property of any description in any part of Kenya. Further, that the State shall not arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).
8. On 2/07/1998, the City Council of Nairobi offered the allotment of plot L.R. No. 11531/4/3 to the Petitioner on the condition that he would pay a standard premium of Kshs. 45,000/- and an annual rent of Kshs. 8,000/- within 90 days from the date the letter of allotment was sent failure of which the offer will be considered to have lapsed without further reference to allottee. The Petitioner herein has not adduced proof of payment of Kshs. 53,000/- as the terms of the Letter of allotment dated 2/07/1998. The Interested Party takes significant note that no proof of payment of the alleged Kshs. 600,000/- has been adduced by the Petitioner as evidence of consummation of the alleged lease between the Interested Party and the Petitioner. The interested Party relied on Sections 107 and 109 of the *Evidence Act*.
9. To them, the Petitioner's failure to produce proof of payments as evidence means he has failed to discharge the burden of proof. The Interested Party herein has no identifiable stake or legal interest or duty in the proceedings before the court save for the payments of rates by the proprietor of the suit



property. The Petitioner has not adduced receipts as proof of payments of rates from the year 2008 to the year 2023. The Petition does not disclose any infringement of rights by the Interested Party. The Petitioner herein has not stated how the Interested Party has infringed on his constitutional rights and freedoms. The Petition discloses no prayers against the Interested Party.

10. The Interested Party prays that the suit be dismissed with costs to the Interested Party.

### **Written Submissions**

11. By the time of writing this Judgment, it is only the Petitioner who had dutifully filed and which I have considered. The Petitioner's submissions are dated 22/02/2024 and filed on the even date.

### **Analysis and Determination**

12. I have very carefully considered the Petition, supporting affidavit, the Interested Party's Statement of Defence Affidavits, the Petitioner's submissions. I have also considered the relevant constitutional and statutory frameworks. Similarly, I have considered the relevant jurisprudence on the key issues in the petition. I postulate that the issues for determination are:

- a. Whether the Petitioner was allocated the suit property.
- b. Whether the Petitioner had accepted and made payments required under the letter of allotment dated 2/07/1998.
- c. Whether the Petitioner is entitled to the Certificate of Lease.
- d. Whether the Petitioner has proved infringement or contravention of his rights under Articles 40 (1), (2) & (3), 47 (1) & (2), 10 (1) (b), 19 (1) and 48 of *the Constitution* and if so, what prayers to grant.
- e. Who pays the costs of the Petition?

13. The Court has carefully considered the grounds on the Petition, the supporting affidavit, the witness statement dated 15/03/2023, the Interested Party's statement of defence, the Petitioner's written submissions and came to the following determinations;

- a. The Petitioner's claim to LR No. 11531/14 is based on a letter of allotment dated 3/07/1998. The Petitioner averred that after payment of a valuable consideration, he obtained a letter of allotment from the Nairobi City Council of the suit property measuring 12.499 hectares. That the allotment was for a period of 99 years at a stand premium of Kshs. 120,000.00 and an annual rent of 12,000.00. The Petitioner averred that he has been complying with all the conditions and terms so imposed in particular paying annual rates as and when demanded.
- b. There is no evidence before this Court in support of the above allegations made by the Petitioner. In his written submissions, his counsel submitted that these documents were contained in pages 10 to 13, 23 and 32 of the bundle of documents. A thorough perusal of the Court record revealed that the Petitioner failed to adduce this evidence before this Court. In fact, the Petitioner failed to adduce any evidence when he filed his Petition. The Petitioner only filed the present Petition together with a supporting affidavit



by Abuodha Joseph Ong'ete on 5/03/2023 and a Plaintiff's witness statement dated 15/03/2023. He later filed written submissions dated 22/02/2024.

- c. The Petitioner also contended that he received a draft lease from his Advocate over the suit property where he paid Kshs.30, 000.00 as conveyancing fees. He also received the Notification of Approval of Development Permission from the City Counsel of Nairobi and paid a sum of Kshs.600, 000.00 for the lease, he also made stamp duty payment and forwarded the lease to the Ministry of Lands for registration. On 5/11/2016, the Nairobi City Council registered the lease of L.R NO. 11531/14 Ruai in his name. The Petitioner's counsel submitted that these documents were to found at page 25 and 32 of the bundle of documents.
- d. Once again, a thorough perusal of the Court record revealed that the Petitioner failed to adduce this evidence before this Court in support of the allegations.
- e. On their part, the Interested Party contended that 2/07/1998, the City Council of Nairobi offered the allotment of plot L.R. No. 11531/4/3 to the Petitioner on the condition that he would pay a standard premium of Kshs. 45,000/- and an annual rent of Kshs. 8,000/- within 90 days from the date the letter of allotment was sent failure of which the offer will be considered to have lapsed without further reference to allottee. The Petitioner herein has not adduced proof of payment of Kshs. 53,000/- as the terms of the Letter of allotment dated 2/07/1998. Further, they noted that no proof of payment of the alleged Kshs. 600,000/- has been adduced by the Petitioner as evidence of consummation of the alleged lease between the Interested Party and the Petitioner. They relied on Sections 107 and 109 of the *Evidence Act* wherein they contended that the Petitioner's failure to produce proof of payments as evidence means he has failed to discharge the burden of proof.
- f. According to the findings above, despite the Interested Party conceding to the issuance of a letter of allotment to the Petitioner, the Petitioner has failed to demonstrate that he was indeed allocated suit property known as LR No. 11531/14 on 2/07/1998 as pleaded. If at all he was allocated the said property, it has not been demonstrated that the Petitioner complied with the conditions and payments required under the alleged Letter of Allotment dated 2/07/1998. The Court does not know whether the Petitioner acquired any registrable rights over the plot described therein as no evidence has been placed before it in support of the same.
- g. The Letter of Allotment was part of the process of allocation of the plot and subject to the Petitioner's complying with the conditions therein. That had the Petitioner proven that he had complied with the condition, it would have led to a lease being prepared and after registration, a certificate of lease (title) would have been issued. (See *Wreck Motors Enterprises vs The Commissioner of Lands and 3 Others* [1997] eKLR.) The Petitioner has made all these allegations about complying with all the conditions and terms so imposed in the letter of allotment and that the Nairobi City Council subsequently registered a lease of LR No. 11531/14 in his name but there is no evidence produced in support of these allegations.



- h. The Petitioner is only failing in his pursuit to claim ownership of the suit property and seeking for an order compelling the Respondent to register the subdivisions and issuance of 399 title deeds because he failed to produce evidence before this Court to support the allegations made. The Court observes that on the dates of 5/07/2023 and 23/01/2024, counsel representing the Petitioner purportedly asserted the filing of supporting documents, yet said documents have not been presented to this Court. It is lamentable that Advocates do not attend Court with the requisite preparedness, as it is incumbent upon them to ensure the completeness of their pleadings. This Court is not tasked with the duty of prodding parties to comply with procedural requirements. Furthermore, the Court takes cognizance of the apparent confusion evident in the Petitioner's submissions. Counsel, while drafting the pleadings, alternately refers to their client as both the Plaintiff and the Petitioner, engendering a measure of ambiguity. Similarly, in the written submissions, the advocate identifies themselves as representing the 2<sup>nd</sup> Respondent/Applicant. Such inconsistencies detract from the clarity and precision expected in legal proceedings, and it is not the prerogative of this Court to decipher the identities of the parties involved.
- i. In view of the foregoing, the Petitioner has failed to prove any infringement or contravention of his constitutional and fundamental rights, or that he deserves to have any of the declaratory prayers issued in his favor. He has also failed to show that he is entitled to any compensation for damages for breach of his rights and fundamental freedoms. On costs, the applicable principles are that costs follow the event. However, the award of the costs is also at the discretion of the Court. Noting that the Respondent did not participate in the proceedings, the Court is of the view that each party bears their own costs.

14. Flowing from the above, the Court finds and holds that this Petition is without merit and the same is hereby dismissed with each party bearing their own costs.

**It is so ordered.**

DATED, SIGNED AND DELIVERED AT NAIROBI, THIS 23<sup>RD</sup> DAY OF APRIL 2024

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**MOGENI J**

**JUDGE**

In the virtual Presence of:

Ms. Lokol holding brief for Dr. Miyawa for the Petitioner

Mr. Menye for the Respondent

None appearance for the Interested Party

Ms. Caroline Sagina - Court Assistant.



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**MOGENI J**

**JUDGE**

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