



**Miron v County Government of Kakamega & 2 others (Environment and Land Case 3 of 2018) [2024] KEELC 4745 (KLR) (19 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4745 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND CASE 3 OF 2018**

**DO OHUNGO, J**

**JUNE 19, 2024**

**BETWEEN**

**TOBIAS ODHIAMBO MIRON ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF KAKAMEGA ..... 1<sup>ST</sup> DEFENDANT**

**PATRICK LUGUSI ..... 2<sup>ND</sup> DEFENDANT**

**JUA KALI ASSOCIATION OF KAKAMEGA ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. Proceedings in this matter commenced through plaint dated 16<sup>th</sup> June 2014, which the plaintiff filed in the Environment and Land Court at Kisumu. The matter was later transferred to this court.
2. The plaintiff averred in the plaint that he was the owner of plot numbers Jua Kali Sheds 398 (684) and 397 (683) (the suit properties) by virtue of allotment to him by Kakamega Municipal Council, the first defendant's predecessor. He added that the allotments had not been revoked, that he complied with the terms of the allotments and that he therefore remained the registered proprietor of the suit properties.
3. The plaintiff further averred that every time he put up a structure on the suit properties, strangers would demolish them at night. That in May 2014, he realised that some people were constructing houses on the suit properties and upon enquiry, he was informed that they were doing so with the permission of the defendants. He added that the defendants had infringed on his property rights and prayed for judgment against them for:
  - a. A declaration that the suit properties belong to the plaintiff.
  - b. A mandatory injunction to compel the 1<sup>st</sup> defendant to give to the plaintiff vacant possession the suit property.



- c. A mandatory injunction restraining the Defendant from carrying out any construction work at the suit property.
  - d. Mesne Profits.
  - e. General Damages.
  - f. Cost of the suit.
  - g. Interest.
4. The first defendant filed a statement of defence dated 18<sup>th</sup> August 2014 in which it averred that it allocated Jua kali Sheds to the third defendant as a block and that the third defendant in turn had absolute power and control to allocate the sheds to its members using its own criteria. That the plaintiff's documents of allotment were a forgery and/or were obtained fraudulently and could not form the basis of the plaintiff's claim. The first defendant further averred that if the plaintiff was allocated the suit properties, the plaintiff lost ownership thereof for failure to develop them within the prescribed period besides failure to comply with other terms of the allotment. The first defendant therefore urged the court to dismiss the suit with costs.
  5. The second and third defendants filed a statement of defence dated 4<sup>th</sup> January 2023 through which they denied the plaintiff's averments and stated that if there was any construction taking place then they had no power to stop the construction since those constructing must have had right to do so. They therefore prayed that the plaintiff's suit be dismissed with costs.
  6. The plaintiff testified as the sole witness in respect of the plaintiff's case. He adopted his witness statement which he filed on 1<sup>st</sup> July 2014 and produced copies of the documents in his list of documents dated 16<sup>th</sup> June 2014. The contents of the witness statement are a rehash of his plaint. He further stated that he was not utilizing the suit properties as of the date of his testimony and that he last utilized them in the year 2013. That he took possession of the plots in the year 2002 and that he did not have any evidence of payment of allotment fee or of compliance with a requirement in the allotment letter that he constructs within twelve months.
  7. The plaintiff further testified that there were two Jua Kali Associations of Kakamega and that he was a member of one of them. He could not, however, produce any proof of membership. He also stated that he paid rates for the suit properties and that someone who he did not know was using the suit properties as of the date of his testimony. He further testified that a two storeyed building occupied by tenants had been constructed on the suit properties.
  8. The plaintiff's case was then closed.
  9. Stephen Sogoni Chune testified as DW1 and stated that he was employed by the first defendant as Director of Physical Planning. He adopted his witness statement dated 30<sup>th</sup> November 2022 and produced item number 1 in the first defendant's list of documents dated 30<sup>th</sup> November 2022. He stated in the statement that the first defendant set aside land for allocation to members of the third defendant for construction of sheds. That the first defendant was not involved in allocation of individual sheds to individual members of the third defendant.
  10. DW1 added that the first defendant allocated the suit properties to the third defendant and was no longer their owner. That as of the date of his testimony, the third defendant was in control of the suit properties. DW1 also testified that the first defendant did not allocate the suit properties to the plaintiff and did not repossess them from the plaintiff. The Jua Kali Association has the responsibility of repossessing the plots.



11. The first defendant's case was thereby closed.
12. Patrick Luvusi (DW2) stated that he is the second defendant and was the chairman of the third defendant as of the date of his testimony. He adopted his witness statement dated 4<sup>th</sup> January 2023 and produced item number 1 in the second and third defendants' list of documents dated 4<sup>th</sup> January 2023.
13. DW2 stated in the witness statement that the plaintiff was not a member of the third defendant and that Kakamega Jua kali sheds Block 1/40 plot numbers 683/684 were allocated to Benard Nyongesa Wekulo and not the plaintiff. That the Municipal Council was restrained through a court order from dealing with Kakamega Jua kali plots and that it did not therefore have any powers over the plots. He further stated that the allotment letter had conditions requiring allottees to develop their plots within six months failure of which the third defendant was at liberty to repossess them.
14. DW2 further stated that when Benard Nyongesa Wekulo failed to develop plot number Kakamega Jua kali phase 11 block 1/140 No. 683/684 as stipulated, the plots were repossessed and reallocated to Leonard M. Luvayo who later transferred them to Simon Ajumbi Sakwa. That the plots were later fully developed and that the third defendant did not have any problems with Simon Ajumbi Sakwa. He further stated that Kakamega Jua kali phase 11 block 1/40 plots are situated along Were Road within Kakamega town as opposed to the plaintiff's plots which according to the plaintiff's documents are situated at Otiende Estate, Khalisia Road. That the third defendant does not own plots in the area where the plaintiff claims his plots are located.
15. The second and third defendants' case was then closed. Parties thereafter filed and exchanged written submissions.
16. I have considered the pleadings, evidence, and submissions. The issues that arise for determination are whether the plaintiff is the owner of plot numbers Jua Kali Sheds 398 (684) and 397 (683) and whether the reliefs sought should issue.
17. The plaintiff has moved the court on the contention that he is the owner of plot numbers Jua Kali Sheds 398 (684) and 397 (683). Among the reliefs that he is seeking is a declaration that he owns the parcels. The plaintiff has built his claims of ownership and indeed his entire case on letter of allotment dated 21<sup>st</sup> March 2002. The said letter is addressed to "Tobias O. Miron" and is headed "Kakamega Municipal Council." It states within its body, in part, that "This is to inform you that the council has allocated to you Jua Kali Plot No. 683 and 684 at Jua Kali Phase II ..." Among the conditions stipulated in the letter were that the allottee was to construct a shed within 12 months from the date of the letter and to pay to the council a sum of KShs 1,500 being allotment fee and revisable annual rent of KShs 826.
18. From the onset, it is important to disabuse the plaintiff of any notion that an allotment letter amounts to title to land. The courts have stated many times that an allotment letter is not title to land. The Supreme Court recently emphasised as much in *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment) where it stated:

58. So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr Joseph NK Arap Ng'ok v Justice Moijo Ole Keiyua & 4 others* CA 60/1997 [unreported]; and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this



principle as follows: “It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all” ...

60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter. ...

We must reiterate the fact that an allotment letter in and by itself, is incapable of conferring a transferable title to an allottee. Put differently, the holder of an allotment letter is incapable of transferring or passing valid title to a third party on the basis of the allotment letter unless and until he becomes the registered proprietor of the land consequent upon the perfection of the Allotment Letter. It matters not therefore that the allotment letter has not lapsed.

19. Beyond waving the letter of allotment, the plaintiff has not demonstrated that he paid the stipulated sum of KShs 1,500 being allotment fee. Further, I note that while the allotment letter refers to “Plot No. 683 and 684 at Jua Kali Phase II” the plaintiff refers to “plot numbers Jua Kali Sheds 398 (684) and 397 (683)” in his plaint. The discrepancy in plot numbers between what is pleaded and what is in the allotment letter has not been adequately explained.
20. I find that the plaintiff has failed to establish that he is the owner of plot numbers Jua Kali Sheds 398 (684) and 397 (683). In those circumstances, the reliefs that he seeks cannot issue.
21. The plaintiff’s case is without merit. I dismiss it with costs to the defendants.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF JUNE 2024.**

**D. O. OHUNGO**

**JUDGE**

**Delivered in open court in the presence of:**

**Ms Ouma for the plaintiff**

**Mr Mondia for the first defendant**

**No appearance for the second and third defendants**

**Court Assistant: M Nguyayi**

