



**Angwenyi & another v County Government of Kajiado (Environment & Land Case 140 of 2018) [2024] KEELC 6947 (KLR) (22 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6947 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 140 OF 2018  
MN GICHERU, J  
OCTOBER 22, 2024**

**BETWEEN**

**EZEKIEL ANGWENYI ..... 1<sup>ST</sup> PLAINTIFF**

**JAIRUS MOHAMMED NYAOGA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

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

**JUDGMENT**

1. The plaintiffs seek the following reliefs against the defendant.
  - a. A declaration that the plaintiffs rightfully hold value interest as joint allottees and registered proprietors of all that property known as Plot No. 152/Industrial Noonkopir T. Centre, suit land.
  - b. A declaration that the defendant ignored, neglected, refused and failed to stop the encroachment on the suit land.
  - c. A declaration that the defendant wrongfully and unjustifiably facilitated the subdivision and issuance of new letters of allotment to the suit land without notice, consultation and consent of the plaintiff.
  - d. An order compelling the defendant to cancel all allotments other than the plaintiffs' allotments in relation to the suit property and to hand over possession to the plaintiffs.
  - e. A permanent injunction restraining the defendant whether by itself, its servants, employees, agents, contractors and all other than the plaintiffs from constructing, fencing, developing, entering and/or trespassing on the suit land.
  - f. Any other relief that this court may deem fit.



- g. Costs of the suit and interest thereon at court rates.
2. The plaintiffs' case is as follows. They are the owners of the suit land which they bought from George Pertet in October 1992 for Kshs. 300,000/-. Before the plaintiffs purchased the land from Pertet, he paid all the outstanding rates and premium. Soon after this, the land was transferred to the plaintiffs. Following the transfer, the clerk to the defendant's predecessors, the Olkejuado County Council, wrote to the commissioner of Lands asking that the plaintiffs be issued with a title deed to the suit land. The Commissioner of Lands duly obliged and issued the plaintiffs with a letter of allotment dated 22/2/1995. A certificate of official search dated 12/2/2008 confirms the plaintiffs as the allottees of the suit land.
3. In February 2008, the plaintiffs discovered encroachment on the suit land by some unknown persons. The plaintiffs complained to the clerk of the defendant's predecessor who on 16/4/2008 wrote to the administrative assistant, Isinya Division informing him of the encroachment, subdivision and development of the suit property. No action was taken by the said Administrative Assistant despite several reminders. Even the Kajiado County Land committee Task Force which was constituted with a view of resolving land disputes in the county did not resolve the dispute. A valuation of the suit land shows that the same is valued at Kshs. 87, 120, 000/- as of 5/3/2018. When every effort made by the plaintiffs to resolve the dispute failed, they served the defendant with a demand letter dated 23/8/2018. When the defendant failed to respond to the demand letter, the plaintiffs filed this suit.
4. In support of their case, the plaintiffs filed the following evidence.
- i. Copy of letter of allotment dated 4/8/1992.
  - ii. Copy of agreement for sale dated 1/10/1992.
  - iii. Rates clearance certificate dated 6/10/1992.
  - iv. Copy of transfer dated 6/10/1992.
  - v. Copy of letter to the Commissioner of Lands dated 5/11/1993.
  - vi. Copy of letter of allotment dated 22/2/1995.
  - vii. Copy of certificate of official search dated 12/2/2008.
  - viii. Copies of letters to County Clerk, Administrative Assistant, Administrative Officer, Governor Kajiado and County Land Management Board dated 27/2/2008, 16/4/2008, 6/11/2012, 21/7/2014 and 8/6/2015 respectively.
  - ix. Copy of valuation report dated 5/3/2018.
  - x. Copy of demand letter dated 23/7/2018.
  - xi. Copy of valuation report dated 11/5/2022 putting the value of the suit land at Kshs. 95 million.
5. In its written statement of defence dated 18/3/2020, the defendant generally denies the plaintiffs' claim in its entirety. It also avers that the plaintiffs' suit is time barred. In support of its case, the defendant filed the following evidence.
- a. Copy of report dated 11/2/2021 by Jonathan Oseur, director of Land Registry.
  - b. Copy of letter of allotment dated 4/8/1992 of the suit land.



- c. Copy of letter of transfer of the suit land to the plaintiffs dated 6/10/1992.
6. At the trial on 17/11/2021, 20/2/2023 and 1/11/2023, the 1<sup>st</sup> plaintiff testified by adopting his witness statement and documents before being cross – examined by the defendant’s counsel. On the other hand, the defendant called its County Land Registrar who produced the report dated 11/2/2021. He said that the suit land belongs to the plaintiffs and the defendant has not failed to stop trespassers on the land.
7. Counsel for the parties were to file written submissions which I have not seen on record at the time of writing this judgment. This judgment has therefore been written without the benefit of those submissions.
8. I have carefully considered the evidence adduced including the witness statements, documents and the witnesses’ testimony at the trial. I find that the following issues arise.
- i. Whether the defendant failed to stop encroachment on the suit land.
  - ii. Whether the defendant subdivided the suit land and issued new letters of allotment.
  - iii. Which of the seven (7) orders sought have been proved.
9. On the first issue, I find that the defendant did not fail to stop the encroachment on the suit land. It was upon the plaintiffs to seek the eviction of the occupiers of the suit land. The plaintiffs have not adduced any evidence to show that the defendant was at fault in allowing the trespassers into the suit land. The defendant’s witness confirmed that officially, the suit land is registered still in the names of the plaintiffs. The plaintiffs should have joined the trespassers as parties to this suit so that the court would hear them before making any order for eviction. Secondly, the letter of allotment dated 4/8/1992 provides as follows at paragraph 2.

“This plot should be developed within 2 years and plans for building should be submitted for approval by the Public Health Officer, District Physical Planning Officer, M.O.W. Building Officer, the District Commissioner and the Clerk to Council within six months of allocation”.

The letter of allotment dated 22/2/1995 provides as follows in the last paragraph.

“...The attached special conditions form part of the offer which should be accepted in writing”.

The plaintiffs did not file the special conditions so that the court could evaluate them and establish if the plaintiffs complied with them. It is highly probable that failure by the plaintiffs to comply with the special conditions in the letter of allotment contributed to the trespass of the suit land by third parties. The defendant cannot therefore be blamed for failures by the plaintiffs.

10. On the second issue, I find that the plaintiffs have not adduced any evidence to prove the suit land was ever subdivided and new letters of allotment issued. Prayer (c) of the plaint dated 9/9/2018 seeks a declaration that such letters of allotment were issued.
11. Since it was the plaintiffs making this averment, it was incumbent upon them to prove it under Sections 107 and 108 of the Evidence Act otherwise, they would fail. I find that having failed to adduce any evidence of subdivision and issue of allotment letters, this particular prayer fails.



12. The plaintiffs' suit seems to be admitted by the defendant in all the other aspects except those two of allowing the trespass onto the suit land and the one of issuing letters of allotment after subdivision.
13. For the above stated reasons, I allow the plaintiffs' suit in terms of prayers (a) and (e) only. No order as to costs.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 22ND OF OCTOBER 2024.**

**M.N. GICHERU**

**JUDGE**

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