



REPUBLIC OF KENYA



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**Kamau v Njehia & 3 others (Environment & Land Case 606B of 2008)
[2024] KEELC 13361 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13361 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 606B OF 2008
AA OMOLLO, J
NOVEMBER 21, 2024**

BETWEEN

CHRISTOPHER KANAI KAMAU PLAINTIFF

AND

TERESIA M. NJEHIA 1ST DEFENDANT

PETER GICHERU NGOME 2ND DEFENDANT

PATRICK NDEGWA KIMANI 3RD DEFENDANT

PATRICK M. MUTHANDE 4TH DEFENDANT

JUDGMENT

1. The Plaintiff sued the Defendants vide a plaint dated 18th December, 2008 and amended on 26th March, 2009 seeking the reliefs state hereunder;
 - a. An order that the defendants and their agents/servants surrenders and give vacant possession of the suit premises to the plaintiff and if need be, the plaintiff be allowed to forcibly evict the said defendant and/or their agents/servants.
 - b. Damages for trespass.
 - c. A perpetual injunction restraining the defendants and/or their agents/servants from trespassing or in anyway interfering with the plaintiff possession of the suit premises.
 - d. Costs of his suit.
 - e. Interest on (b) and (d) at court rates.
2. He pleaded that on or about the year 2001, the Defendants or their agents and other unknown persons acting under their instruction without the consent or authority of the plaintiff wrongfully and without



- any lawful justification entered the plaintiff's aforesaid suit premises and took possession of the said premises. That the said act as aforesaid amounted to a trespass by the defendants and their servants and/or agents and the trespass is still continuing.
3. By reason of the aforesaid matters the Plaintiff has been deprived off the use and enjoyment of the said property and has thereby suffered loss and damage. The Plaintiff has on several occasions demanded that the defendant vacate the suit premises but such demands have been ignored. The defendants have threatened and intended unless restrained by the court to continue the trespass upon the plaintiff's property as aforesaid.
 4. In denying the claim of the plaintiff, the Defendants filed appearance on 23rd July, 2009 and a statement of defence on the same date which was amended. The Defendants stated that the suit premises Limuru/Town/82 were allocated to Kariuki Munyu, Githanji Murakaru and Njihia Kimani – deceased and others who are also deceased in 1967. The plot was eventually transferred to Ngome Gicheru Self-Help Group who are the genuine allottee.
 5. The defendants will further contend that since 1967 todate, the said allottees have operated the only slaughter house in Limuru without any interruption hence the plaintiff's claim unfounded and has no legal basis. The defendants deny having trespassed onto the suit land at any time as alleged and puts the plaintiffs to strict proof thereof.
 6. They impleaded that the original number for the suit land before resurveying was Limuru Town/82 but after the new Town Planning Plot No. Limuru Town /370 was superimposed on it forming part of it and being one and the same on one part and also covering LR NO. Limuru Town/82.
 7. The defendants will contend that if the plaintiff has a Certificate of Lease then he will contest its validity as the same is a forgery and or obtained through fraudulent means and or misrepresentation.
 8. The defendants will contend at the hearing that Plot No. Limuru Township/370 & Limuru Town/82 are separate and distinct parcel of land through adjacent to each other.
 9. They aver that the suit is fatally defective for want of procedure and lacks merit. The Defendants pray the suit be dismissed with costs.
 10. After the close of pleadings, the matter was fixed for hearing. At the hearing the plaintiff relied on his sole witness while the Defendants called three witnesses. The plaintiff relied on his witness statement and documents filed in support of his case. PW stated that he is the registered owner of L.R No. Limuru Town/370 which he discovered in the year 2001 had been trespassed on by the Defendants. That following the discovery, he peacefully asked the Defendants to vacate but, they declined or ignored the demands.
 11. It is the plaintiff's further evidence that the Defendants own plot no. Limuru Town/82 which is adjacent to his. That ever since the Defendants go onto his land, he has suffered immensely as he has been denied vacant possession. He avers that he has twice confirmed his plot location. That on the PDP, his plot was not surveyed (page 70 – 79 of bundle) but plot 82 was already surveyed.
 12. During cross-examination, the plaintiff said he was aware the 2nd and 4th Defendants were deceased while the 1st and 2nd Defendants are running the slaughter house on behalf of the group (Ngome Self-help). He was shown licenses issued to the group to operate the slaughter house and one of the documents assert the project was started in 1947.
 13. The witness admitted we did not have minutes of the District Registration Committee which sat in Kiambu. That the plot allocated measured 0.039 ha while his lease reads 0.0758. He also confirmed



- not paying for the stand premiums within the time lines provided (between 1992 – 1993). That the valuation report says almost the entire plot is taken by the road. He denied being allocated a road reserved.
14. The plaintiff denied the existence of the plot since 1967. He denied altering the lease to get a plot that does not belong to him. That he has sued the Defendant s only because they are illegally on his plot. In addition, the plaintiff states the license at page 30 was issued on 1999 for a business in plot 82, Rongai yet the Defendants are doing business on plot 370, Limuru. He posited the case against Limuru sub-county is for compensation for the 15m road.
 15. Patrick Ndegwa Kimani sued as the 3rd defendant testified on 24th April, 2023 as the first defence witness. He adopted his witness statement dated 9th May, 2022 as his evidence. DW 1 said he is the chairman of Ngome-Gicheru Self Help Group who owns the plot in dispute. It is his evidence the plot was initially allocated to Ngome – Gicheru and 6 others in 1967 and a slaughter house built the same year. That it was wrong to sue him because he does not own the property.
 16. DW 1 continued to state that the 1st Defendant is a wife to a deceased allottee and is the treasurer of the self-help group. That the group was registered in the year 2000 and an allotment issued in the name of the group in the year The witness referred to the business permits issued to the group at pages 30 – 37 and 52 as well as plot rents paid from 1998.
 17. The witness denies that they were issued with permits operating a slaughter house in someone’s land. That they have a letter issued to them to process a lease for their plot and which lease is still ongoing. In this process, they prepared a ground survey report which recommended they be issued with a lease (page 46 of their bundle). It is his further evidence that plot 370 is adjacent to plot 82.
 18. He produced pictures of their land which has a stone wall and it is next to a tarmacked road. He contends that the plaintiff’s plot is super-imposed partially on their land and on the road. He added that he had produced death certificate for 2nd Defendant and burial permit for 4th Defendant. He produced the documents in their bundle as D ex 1 – 18 and 20 – 21. No. 19 was marked for identification.
 19. Under cross-examination, he was shown green card for parcel 82 which records Evanson Munira as the owner. DW 1 admitted he had not produced evidence to corroborate his assertion that Munira owns plot No. 8. He confirmed that the RIM produced by the plaintiff confirms both plots 82 and 370 exist. He denied they were running a slaughter house on plot 370. That the business receipts produced are for plot 82 not 370.
 20. He admitted he has not produced any evidence to show occupation between 1967 – 1999. He said he cannot confirm the authenticity of the green showing Murira as the registered owner of plot 82. That they formed the self-help group after the death of their fathers. He denied they are trespassing on plot 370.
 21. DW 2, made Cai Kingori said he is a surveyor working with the County Government of Kiambu currently serving at Lari Sub-County. He stated that between 2016 – 2023 he was working at Limuru sub-county. He said he is the one who prepared and signed the survey report (page 46) pursuant to a request from Ngome – Gicheur. That Ngome wanted to get a lease so he visited to prepare the ground size and file a report in respect of Limuru Plot 82. He confirmed the Defendants have a slaughter house and hotel within the plot. He produced the report as D ex
 22. In cross-examination, he admitted that based on the green card for plot 82 shown to him, Ngome – Gicheru was not the owner. That when he wrote the letter requesting for lease to be issued to the



defendant, he was not aware there was an existing lease for plot 82. The witness insisted he was guided with a map and the allotment letter while preparing his report.

23. In re-examination, DW 2 said the request to survey the plot comes from Director of survey within Kiambu County. That when a lease given, the number of the plot changes. That they use maps that were prepared by their predecessors when conducting survey and he confirmed P ex 5 is original map for the area. That the report at page 47 bears his signature and it was a back up to the first report at page 46.
24. Nigere Yusuf Isaac also a surveyor currently serving at Limuru sub-county testified as DW 3. He produced the written statement of Virginia Njoki Gatungo dated 22nd January, 2014. He said he had the copy of list of allottees extracted from the binders of the County – which binders he said were heavy to bring physical copies but were available for inspection. He also produced copies of minutes held on various dates in 1967. DW 3 confirmed that the minutes of 2000 (D ex) produced by the Defendants were genuine.
25. DW 3 confirmed plot 82 was allotted to the Ngome – Gicheru Self-Help Group. The same was confirmed by the register of allottees as at 20th December, 1983. He further affirmed that there is a slaughter house on plot 82. The witness states that he had not seen a map showing plot 370 and he had no record of PDP produced by the plaintiff.
26. The witness continued to state that the original No. of the land was Limuru/Karmiritu/587 which was then subdivided. That the No. 82 remains as long as it has not been given a fixed survey.
27. On cross-examination by Mr. Omulanya learned Counsel for the Plaintiff, DW 3 said the letter of instruction to him was to give evidence concerning Limuru town Plot 82. He confirmed that the copy of allotment letter produced by the Defendants was not certified. That the minutes of 15th & 16th November, 1967 does not mention any plot number or refer to the business as a slaughter house. That comments (a) to (g) mentioned in the minutes of 29th and 30th November, 1967 were not produced.
28. DW 3 maintained that before a lease, there must be an allotment. That land cannot be allotted twice. That the allotment to the Defendants is dated 8th January, 2001 by which time, Evanson Munira had already obtained a certificate of lease. He contended that a county government can receive rents from a non-existent plot.
29. At the close of the hearing parties filed their further submissions. The Plaintiffs submissions are dated 28th June, 2024. The plaintiff submitted that he is legally registered as owner of L.R Limuru Township/370. He relied on several documents inter alia Limuru PDP dated 4th December, 1968 to assert that he acquired his title after due process. The plaintiff cites the Supreme Court of Kenya in *Dina Management Ltd Vs. County Government of Mombasa and 5 Others* (2023).
30. Further and to buttress the above position, the process of allotment was also explained by this Honourable Court in *Ali Mohamed Dagane (Granted Power of attorney by Abdullahi Muhumed Dagane, suing on behalf of the Estate of Mohamed haji dagane) v Hakar Abshir & 3 Others* (2021) eKLR where the learned Judge held as follows;

“Having evaluated in detail the necessary steps to be followed, it is emergent that a litigant basing their interest in land on the foundation of an allotment letter must provide the following proof: First, the allotment letter from the Commissioner of Lands; Secondly, and attached to the allotment letter, a part development plan; Thirdly; proof that they complied with the conditions set out in the allotment letter, primarily that the stand premium and ground rent were paid, within the specified timeline. It would also help a litigant’s case,



although this may not be mandatory based on the stage of the transaction, to have a certified beacon certificate” (Emphasis mine)

31. The Approved Limuru Development [Plan of 1968](#) clearly shows the Plaintiff’s parcel of land which at the time was unalienated, unsurveyed and unnumbered. So the Plaintiff has evidence to prove that as early as 1968, way before he acquired it, the subject property was in perfect existence as unalienated government land.
32. That the RIM from Director of surveys clearly shows the existence and position of the Plaintiff’s plot 370 on the ground in relation to the neighbouring plots. It is trite that the Director of Surveys is the legitimate custodian of all maps in Kenya and therefore the authenticity of the said paid cannot be tainted.
33. The plaintiff proceeded to reiterate the facts contained in his documents inter alia that the County Surveyor in his said report dated 15th June, 2016 states that the surveyors visited the site on 10th June, 2016 and found out that a slaughter house was sitting on the said Limuru Township/370 among other findings. Anyway, the Plaintiff also engaged a licensed private surveyor christened Eathscope Survey Services who in a report dated 18th October, 2012 also confirmed that there is an arbator (Slaughter house) being operated on Limuru Township/370.
34. In rebutting the adduced by the Defendant, he cited the case of Ali Mohamed Dagane vs Hakar Abshir & 3 Others (2021) eKLR and stated that a proper letter of allotment must originate from the Commissioner of Lands and be accompanied with a PDP. He argues that the Defendant’s letter of allotment produced is not valid because;
 - i. The document is not from and/or signed by the Commissioner of Lands as the law requires but it is signed by a Clerk from Kiambu County Council.
 - ii. There is no part development plan attached to this document.
 - iii. The Stand Premium which is a condition precedent in acceptance of allotments is not even mentioned in the document.
 - iv. The document itself refers to re-allocation and there is no mention of allotment in the entire document.
35. According to the Plaintiff, the Defendants have not produced any document of land ownership known in law. That all the documents presented by the Defendants were forged and manufactured to justify their defence of trespass. The plaintiff in explaining the role of the Municipal Council in allotment of plots referred to the Ali Mohamed Dagane Case supra which held thus;

“This court in the case of Mako Abdi Dolal v ali Duane & 2 Others (2019) EKLR noted that prior to the promulgation of the 2010 Constitution and the 2012 amendments to the body of Land Laws in Kenya, disposition of government land was governed by the Government Lands Act (Repealed).”
36. In conclusion, the plaintiff submitted that they had proved the trespass and that they were entitled to damages. They cited several case law to support their argument for compensation for the trespass inter alia; Naseta & Mukakaik Ltd vs Kenya Urban Roads Authority & 2 Others (2023) eKLR.
37. The Defendants submissions are dated 26th July, 2024 citing the provision of section 107 & 108 of the [Evidence Act](#) (Cap 80). The Defendants submitted that the Plaintiffs should not just dangle the title document as proof of his case. The Defendants submit this court agreed with the decision in the case



of *Mako Abdi Dolal v Ali Duane & 2 Others* (2019) eKLR which observed that the process and Power of public land prior to promulgation of *the Constitution* was vested in two entities: The President and the Commissioner of Lands, under Section 3 and 9 respectively.

38. They aver that the respective Municipal Council in which the land to be disposed was situate had the mandate of advising the Commissioner of Lands on which portions of land could be disposed. This step would have required the responsible council to visit the area or to carry out a fact-finding mission to satisfy itself that the land was first of all government land.
39. According to the Defendants, the Plaintiff did not produce any document to show the process he used to obtain his allotment letter he produced before the court. That DW 4 confirmed the position marked “a” is in fact an access road which then supports the averments in the plaint filed in ELC No. E078 of 2020. For their claim, the Defendants submitted producing documents from Kiambu County Council allocating plot 82 of Ngome Gicheru Self-help Group.
40. They added that the plaintiff had not lead any evidence of lost income or compute the loss to be entitled to any damages. They urged the court to dismiss the plaintiff’s suit with costs.

Analysis & Determination:

41. After reviewing the evidence adduced and the submissions rendered, it appears that the plaintiff is alleging trespass on the part of the Defendants. On the other hand, the Defendants deny and assert that they are carrying on business on plot No. Limuru Town/82 which plot is distinct from plot 370 belonging to the plaintiff. Hence the question for determination is
 1. Whether or not the trespass alleged is proved.
 2. If yes, whether the plaintiff is entitled to damages
 3. Who bears the costs of this suit.
42. Each of the parties filed documents to corroborate their claim. The plaintiff has the burden to discharge by showing evidence of trespass which the Defendants have denied. To demonstrate that where the Defendants slaughter house is belongs to him, the plaintiff relied on his title documents and submitted on the process he followed to obtain his title. In my view, what is under challenge in this case is;
 - i. The ground position of plot 370 and plot 82
 - ii. Whether the same plot was allocated twice.
43. One of the grounds stated by the plaintiff to assert rights on the plot currently occupied by the Defendants is that the Defendants plot 82 is registered in the name of some 3rd party called Evanson Munira. He produced a green search card to corroborate this averment. Second, the plaintiff argued that the letter of allotment relied upon by the Defendants is forged because it was not issued by the Commissioner of Lands.
44. Indeed, it is the Commissioner of Lands mandated to issue letter of allotments but this does not mean that the Municipal Council’s role was only limited to carryout fact finding mission and advise the Commissioner. This is in line with the provisions of the Trust *Land Act* Cap 288 (repealed) which vested trust lands in the council.



45. Section 13(1) of the Trust Land Act which was repealed by the Land Registration Act 2012 provided that;

- “(i) In pursuance of section 117(1) of the Constitution, a council may set apart an area of Trust land vested in it for use and occupation:
- a.
 - b.
 - c. by any person or persons for purposes which in the opinion of the council are likely to benefit the persons ordinarily resident in that area or any other area of Trust land vested in the council, either by reason of the use to which the area set apart is to be put or by reason of the revenue to be derived from rent therefrom.”

46. The law granted the council power to give part of its land to its residents as was deemed necessary. Once given land, the person would then present the letter of offer to the Commissioner of Land to be issued with an allotment letter having processed/fulfilled the other requirements. In this case, the defendants have presented an allotment letter issued to them by the Municipal Council Limuru (D ex 1 and 7C). They called a witness (DW 3) from the sub-county administrator’s office who confirmed that the Defendants were indeed allotted plot 82 by the Municipal council.

47. The Plaintiff’s submission that the said document is forged merely because it did not emanate from the Commissioner of Lands is not grounded in law and the Defendants called the issuing authority who confirmed its validity. The case of Ali Mohamed Dage Supra is quoted out of context. The scenario presented in that case is what takes place after the steps from the Municipal Council not prior. The law requires strict proof of fraud on a standard higher than civil cases and in this case, the plaintiff did not prove that the Defendants documents are fraudulent.

48. The other question is the existence of plot 82 registered in the name of Evanson Munira and the plot 82 occupied by the Defendants. The plaintiff produced a copy of the certificate of official search as P ex 18 (page 40 of his bundle) showing a title was issued to the said Munira on 16th June, 2000.

49. It has been explained by DW 2 and DW 3 that the plot numbers given by the council changes after survey and or the number that is finally given in the certificate of lease. This evidence is confirmed by the plaintiff’s own letter of allotment which was numbered “A” and upon obtaining a lease is now numbered Limuru Township/370. Further, DW 3 said Evanson Munira’s name appeared in their list of allottees and was allotted plot No. 8. The evidence adduced confirm plot No. 82 (vide letter of allotment) is distinct from L.R No. 82 formerly Plot 8 by way of allotment.

50. The Defendants in denying the plaintiffs claim besides their ownership documents, made reference to the pleadings in ELC 78 of 2020 Christopher K. Kamau vs KURA & 2 Others. In this suit, the Defendants submitted that the plaintiff pleaded that part of his land had been taken by the Northern bypass. The relevant paragraphs of that plaint are;

“

- “7. The Plaintiff avers that when he sought to have his beacons established in accordance with the law by the Kiambu Land Registrar and surveyor he was surprised on the realization that the part of the Northern Bypass had been arbitrarily built on the said property being Limuru/Township/370.”



“9 The Plaintiff avers that the said letter dated 15th June, 2016 succinctly states that there is a 15-meter tarmac road stretch that passes through the said Limuru/Township/370 which was not constructed in its right position as it was supposed to bounder the southern boundary of the said parcel.”

51. One of the prayers sought in that claim (ELC 78 of 2020) is for a declaration that the Defendant’s construction of a 15 metre stretch of the Northern bypass through the plaintiff’s land Limuru Township/370 was unlawful. He also sought to be compensated for the current market value of property. Further, the Defendants took note with the plaintiff’s written statement where he said thus;
- “ Even so from the title documents it is clear to see that they own the plot land (title No. 82) that is adjacent to mine.”
52. The survey report dated 18th October, 2012 relied upon by the plaintiff to prove the location of plot 370 appears inconclusive to me. First, it does not distinguish which plot No. 82 it identified – the one claimed by the defendants or the one registered in the name of Munira. Since the plaintiffs land is a lease having fixed boundaries, the report does not give the beacon numbers used to confirm that it occupies the same space as the arbator.
53. The plaintiff also wondered what sort of map would have names of people indicated on it (D ex 9 – original plan for Limuru/Rongai Market). The document on its face is titled “Rongai Market, Limuru/Kamirithu/587.” DW 3 said that the land original title which was subdivided to create plot 82 amongst others was LR No. Kamirithu/587. Thus the impugned document is a sketch plan of the Limuru Municipal Council which listed the persons they had given the plots. DW 2 and 3 who are employees of the Limuru sub-county confirmed it originated from their office. I find nothing wrong with Defendants relying on the said document to corroborate their claim to the land they are in possession.
54. The other issue which the plaintiff needed to clarify but which he did not is the variation of size of the plot from what was allotted to him and the size appearing on the certificate of lease. In his letter of allotment, the land given was 0.039 ha and he ended up with a size of land measuring 0.0758 ha which is almost twice the size of land allocated. This was necessary to cast out any doubt that in processing his title, it could have swallowed the Defendants plot 82 which is measuring 40 feet by 80 feet.
55. The plaintiff has gone into great lengths in his submissions to elaborate that he validly acquired title to his property but he did not and no document produced to justify the increment in acreage. Why do I find this evidence important? The Plaintiff produced a map at page 89 titled Limuru Kamirithu Registration Section. This map shows the existence of plot 370 between plots 82 and 134. If part of the land that the Plaintiff claims (in ELC 78 OF 2020) was taken by the road, what would allay the doubts that the whole of it was eaten by the road and not the arbatoir as he claims?
56. The upshot of the foregoing analysis is that I find the plaintiffs case is not proved within the standard of probabilities. It is therefore dismissed with costs to the Defendants.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST NOVEMBER, 2024

A. OMOLLO

JUDGE

