



**Gisa & 2 others v National Land Commission & another (Environment & Land Case 281 of 2018) [2024] KEELC 7474 (KLR) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 7474 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 281 OF 2018  
AA OMOLLO, J  
NOVEMBER 7, 2024**

**BETWEEN**

**KORINKE OLE GISA ..... 1<sup>ST</sup> PLAINTIFF  
PAUL MOI NGULNTO ..... 2<sup>ND</sup> PLAINTIFF  
OLDAPASH OLE OLOIBON ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> DEFENDANT  
ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs brought the suit against the National Land Commission and the Attorney General (Defendant) vide their plaint dated 13<sup>th</sup> June, 2018 and amended on 9<sup>th</sup> July, 2018 seeking the following reliefs;
  - a. A declaration that the issuance of an allotment of L.R 9363/27 in favour of the Cabinet Secretary to the Treasury for purposes of a Police Station is irregular, unlawful and illegal.
  - b. A Permanent Injunction to restrain the Defendants either by itself, its agents, servants, assignees, from evicting the 1<sup>st</sup> – 3<sup>rd</sup> Plaintiffs from I.R 9363/21.
  - c. An order cancelling the allotment of L. R. 9363/27 in favour of the Cabinet Secretary to the Treasury for purposes of a Police Station or any other subsequent process.
  - d. Costs of this suit with interest thereon.
  - e. Any other relief that this Honourable Court may deem just to grant.



2. The plaintiff plead that the 4<sup>th</sup> Plaintiff was originally the registered owner of the land number 9363 commonly referred to as Giathieko farm. That sometimes in 1996, the 4<sup>th</sup> Plaintiff subdivided the land 9363 into 118 plots inter alia L.R No. 9363/21. They aver that L.R 9363/21 was reserved for purposes of a church and nursery school while L.R No. 9363/93 was for public utility including a primary school and Police Station.
3. It is impleaded that the 1<sup>st</sup> – 3<sup>rd</sup> Plaintiffs and numerous other persons belonging to the Maasai Community as well as their families are in occupation and were using L.R 9363/21 for grazing purposes and they have been using the land for the past 24 years. However, in March 2018, the OCS of Mwiki Police Station and the Chief of Mwiki Location proceeded to the suit land and informed the plaintiffs to move out to allow for the construction of a police station.
4. The Plaintiffs stated the D. O. left an allotment letter in favour of the Cabinet Secretary to the Treasury for the property No. L.R No. 9363/27. It is their case that the Defendant is purporting to allocate a property that it has no power to allocate. The Plaintiffs are aggrieved and are under threat of being evicted from a place they know as home. They urge their reliefs be granted.
5. The 2<sup>nd</sup> Defendant filed a statement of defence dated 16<sup>th</sup> May, 2022 denying the claim and put the plaintiffs to strict proof. The 2<sup>nd</sup> Defendant pleaded the plaintiffs are not entitled to the reliefs claimed. He urged the court to dismiss the case with costs.
6. During the hearing, the plaintiffs called witnesses while the Defendants did not call any evidence. James Mbugua Ngang'a testifying as PW 1 produced the documents filed as P ex 1 -6. He stated that L.R No. 9363/21 was a subdivision of 9363. PW 1 said he was a stranger to L.R. No. 9363/27 and does not agree with the letter of allotment dated 8<sup>th</sup> January, 2018.
7. In cross-examination, PW 1 admitted he had not presented copies of the approval for subdivision where there were comments made by the approving authorities. He admitted that 9363/27 was registered in the name of Mbugua Kangethe. In their schedule, there was no plot allocated for building a police station. The witness denied 9363/93 was given as a road. In re-examination, PW 1 said no one had challenged the subdivision of 1963.
8. Korinke Ole Gisa in is evidence as PW 2 said he is herdsman and he lives on the suit property. he adopted his witness statement dated 13<sup>th</sup> June, 2018. The witness avers that he has put up a church and a primary school on the suit property. He asserted that the police came on to the land and asked them to vacate the land. That he wanted he be assigned the land just like others.
9. Under cross-examination PW 2 said he entered the suit land in 1976 when it was vacant and bushy. That the clan elders at the time gave him person to use it. That the suit land measures one acre and it is occupied by many families. He confirmed there is no police station or hospital there. That as per schedule, plot 21 is marked as a nursery school.
10. The Plaintiffs called Paul Moi as PW 3 who introduced himself as a herdsman. He adopted his written statement dated 13<sup>th</sup> June, 2018 as his evidence in chief. PW 3 said the original land measuring 1200 acres was registered in the name of the 4<sup>th</sup> Plaintiff. That he settled on the land 9363 in 1994 before the subdivision in 1996. That 9363/21 was surrendered for the community for a church and nursery school.
11. He averred that the family have been in occupation until March, 2018 when the OCS Mwiki accompanied with other officials came on the suit land and told them it was marked for a police station. They were asked to vacate. As a result of the threat of eviction, they filed this suit.



12. In cross-examination, PW 3 said he was born on this land in 1939. That he was present when the police came to claim the land although they said their plot was No. 27. That according to the schedule, plot 27 is registered in the name of Mbutuia Kangether.
13. The 3<sup>rd</sup> Plaintiff (PW 4) gave same evidence as the previous witness. With that evidence the plaintiff's closed their case. None of the defendants called any witnesses.
14. The parties were given time to file submissions. It is only the 2<sup>nd</sup> Defendant whose submissions are on record (CTS). The 2<sup>nd</sup> Defendant submitted that the 1<sup>st</sup> – 3<sup>rd</sup> Plaintiffs have not disclosed capacity in which they bring this suit or their relationship with the 4<sup>th</sup> plaintiff. They also submit that the 4<sup>th</sup> plaintiff cannot file suit without company resolution. They relied on the case of Multi Options Ltd vs. Kalpana S. Jai & 2 Others (2009) eKLR.
15. The 2<sup>nd</sup> Defendant submits further that the 1<sup>st</sup> – 3<sup>rd</sup> Plaintiffs did not present any evidence of the threatened eviction or that they genuine allottees of L.R NO. 9363/21 as the documents presented depict otherwise. The 2<sup>nd</sup> defendant urged that the suit be dismissed with costs to them.

**Determination:**

16. The evidence presented by the plaintiffs have not been contradicted by the Defendants. In his submissions, the 2<sup>nd</sup> defendant stated that the 1<sup>st</sup> – 3<sup>rd</sup> Plaintiffs have not proved any interested in the suit title. The 1<sup>st</sup> to 3<sup>rd</sup> Plaintiffs confirmed that they are living on the suit property with other families and that they have lived there for ages.
17. The Plaintiffs stated that No. 9363/21 was given to the Maasai community for which they are members of to build a church and nursery school. They produced photos of a children at a school called Elimu Junior Academy Giathieko on L.R 9363/21 Community Project. They also showed pictures of classrooms and a church. None of the defendants denied these structures are on the suit land.
18. The Plaintiff went further to produce the subdivision map for 9363/21 which show the plot was allocated for use as a nursery school. The plaintiff also presented an allotment letter for L.R. No. 9363/27 dated 8<sup>th</sup> January, 2018 to C.S Treasury and which letter they said had been dropped on the suit land by the OCS Mwiki Police Station. Besides dropping this letter, it was the Plaintiff's evidence that the OCS asked them to vacate to create room for constructing a police station,
19. Although the 2<sup>nd</sup> Defendant in its statement of defence denied that the plaintiffs had not shown evidence of threat of eviction, It did not call evidence to contradict that the OCS Mwiki and other government agencies visited the suit land and asked the people on the land including the 1<sup>st</sup> to 3<sup>rd</sup> Plaintiffs to vacate. That the basis for asking them to vacate was the land having been allocated to the Cabinet Secretary Treasury as per copy of the letter left behind. The Plaintiffs relied on the schedule used to subdivide the original title 9363 to assert that plot 27 was already allocated to Mbugua Kangethe during the subdivision in 1996 and not for a police station.
20. There is no contradiction that PW 1 was a director of the 4<sup>th</sup> Plaintiff and it was his evidence that in their subdivision there was no plot allocated for building a police station. That no one had challenged the subdivision of L.R No. 9363. The inference from the evidence presented is that no plot could be allocated by the National Land Commission (1<sup>st</sup> Defendant) as all plots arising from subdivision of L.R 9363 had been assigned.
21. Since the 4<sup>th</sup> Plaintiff acknowledges assigning plot 21 for a nursery school and indeed there is one existing. Further the 1<sup>st</sup> to 3<sup>rd</sup> Plaintiffs have said they have occupied the suit land for a considerable period of time without interruption hence they acquired prescriptive rights on it. The Defendants and



their agents and or employees should be restrained from interfering with their peaceful possession and occupation. I am satisfied that the Plaintiffs have made a prima facie case.

22. Consequently, judgment is entered in their favour as per plaint thus;
- a. A declaration be and is hereby made that the issuance of an allotment of L.R 9363/27 over the same ground position as plot number L.R. No 9363/21 in favour of the Cabinet Secretary to the Treasury for purposes of a Police Station is irregular, unlawful and illegal.
  - b. An order of Permanent Injunction is issued restraining the Defendants either by itself, its agents, servants, assignees, from evicting the 1<sup>st</sup> – 3<sup>rd</sup> Plaintiffs from I.R 9363/21.
  - c. Costs of this suit to the Plaintiffs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024**

**A. OMOLLO**

**JUDGE**

