



**Ruenji v Omwenga & 2 others (Environment and Land Case  
609 of 2014) [2023] KEELC 17140 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 17140 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 609 OF 2014**

**LN MBUGUA, J  
APRIL 27, 2023**

**BETWEEN**

**LYDIA WANJIKU RUENJI ..... PLAINTIFF**

**AND**

**THOMAS OMWENGA ..... 1<sup>ST</sup> DEFENDANT**

**DANIEL SIBWORI ..... 2<sup>ND</sup> DEFENDANT**

**FLORENCE OUMA JANGARA ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff commenced this suit by a plaint dated 19.5.2014. She claims to be the registered owner of the parcel of land known as Plot No.34 situated at Maisha Green Estate, Dandora. It is her case that she had secured the plot with a perimeter fence which was brought down by the Defendants who invaded it on diverse dates between 25<sup>th</sup> November 2013 and 10<sup>th</sup> April 2014. She avers that as a consequence of the said invasion she has suffered damages including loss of expected income as she intended to put up rental units on the suit land. She prays for judgment against the defendants in terms of an injunction restraining the Defendants by themselves, their servants, and or agents from damaging, removing, selling or interfering with the suit land as well an order for costs of the suit.
2. The Defendants failed to file a defence despite being served and instructing Counsel to appear for them in the matter. On the date scheduled for hearing, 14.2.2023, the defence counsel made an application for adjournment stating that they needed to put in a defence statement. In two rulings delivered on the same date, the court declined the application noting that the case was 8 years old. The matter therefore proceeded as an undefended claim.
3. The Plaintiff called 4 witnesses and she testified as PW1. Her witness statement dated 19.5.2014 was adopted as her evidence. She produced 9 documents contained in her list of documents of even date as P. Exhibit 1-9.



4. In her witness statement, she states that she purchased Plot No. 34 situated at Maisha Green Estate from one Stephen Wachira Kamangu vide the sale agreement dated 7<sup>th</sup> September 2006. The vendor issued her with the plot's ownership certificate No.059. He then transferred the plot to her at the offices of Maisha Green Estate Dandora, formerly known as North Region Jua Kali Association and she was issued with a new plot ownership certificate No.544.
5. She states that around October 2011, the 3<sup>rd</sup> Defendant presented some documents to officials of Maisha Green Estate bearing plot No. 034 purporting to have purchased the suit plot from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. That on 3.11.2013, the officials of Maisha Green Estate called a meeting of members at Dandora to discuss issues of fake documents used by criminals to sell members' plots to unsuspecting members of the public. Following that revelation, she learnt that her plot had been illegally sold. She reported the matter to the police who arrested the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and arraigned them in court.
6. PW2; Stephen Wachira Kamangu adopted his witness statement as his evidence. He states that on 7<sup>th</sup> September 2006, he assigned his brother Simon Chege Kamangu to sell on his behalf Plot No. 034 at Nairobi North Region Jua Kali Association. He gave him his copy of ID No. 205xxxx and the original certificate for the plot being No.059. He further stated that the sale transaction of the suit plot was conducted in the presence of his brother who represented him as well as Richard Kamau Waweru, Paul Nyota and Solomon Kihara. That is how he came to sell the suit land to the plaintiff.
7. PW3 is Benjamin Obinchi, and was a Secretary at Maisha Green Estate. His witness statement was adopted as his evidence. He states that around October 2011, some documents were presented to them bearing the name of the 3<sup>rd</sup> Defendant as owner of the suit plot for purposes of processing Nairobi City Council allotment card. Upon questioning how the 3<sup>rd</sup> Defendant acquired the plot, he was told that she purchased it from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who gave her a certificate of Nairobi North Region Jua Kali Association. Subsequently, Maisha Green Estate management prepared clearance documents and forwarded the same to Nairobi City council for issuance of the plot card which was issued on 16.11.2011.
8. On 3.11.2013, the Plaintiff raised a complaint at the Annual General Meeting of Maisha Green Estate that some unknown persons had invaded the suit plot and they were constructing thereon. The management of Maisha Green Estate scrutinized the documents presented by the Plaintiff and those presented by the 3<sup>rd</sup> Defendant and verified that the Plaintiff purchased the suit plot from the 1<sup>st</sup> allottee, Mr. Stephen Kamangu vide the sale agreement dated 7.9.2006.
9. He states that they were misled and/or misinformed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to believe that the sale to the 3<sup>rd</sup> Defendant was legal hence they proceeded to issue a plot card to the 3<sup>rd</sup> Defendant on that basis. He recommends that the plot card issued to the 3<sup>rd</sup> Defendant be cancelled and a new card be issue to the Plaintiff who is the plot owner.
10. PW4 was one Paul Nyota. His witness statement was adopted as his evidence. He states that he witnessed the sale agreement dated 7.9.2006 for sale of plot No.0.34 to the Plaintiff by Stephen Wachira Kamangu.
11. The Plaintiff filed written submissions dated 24.2.2023 where she relied on the case of *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & Another* [2014] eKLR and *Karuru Munyororo vs. Joseph Ndumia Murage & Another* Nyeri HCCC No. 95 of 1888 to submit that the Plaintiff has proved her case on balance of probability.



## Determination

12. Having considered all the material presented before this court, I find that the issue for determination is; whether the Plaintiff has established ownership to the suit land.
13. The Plaintiff claims ownership of the land known as Plot No. 034 located at Dandora. Her claim is pegged on the sale agreement dated 7.9.2006 between her and one Stephen Kamangu. The said vendor testified as PW2. He admits that he sold the suit plot through his brother Simon Chege Kamangu to the Plaintiff. He gave her his plot ownership certificate No.059 issued by Nairobi North Region Jua Kali Association. PW4 was a witness to the sale agreement. The Plaintiff was then issued with a new Plot Ownership Certificate No. 544 for plot No.034.
14. PW3 testified that the suit plot was first allocated to Stephen Kamangu. His allotment was never cancelled. That being the case, the Plaintiff's evidence is uncontroverted.
15. In *Caroline Awinja Ochieng & another v Jane Anne Mbithe Gitau & 2 others* [2015] eKLR, the court held that;

“Unlike registered land where ownership is domiciled and founded in the register of titles, ownership of unregistered land and the ascertainment or confirmation thereof involves the intricate journey of wading through documentary history.”
16. It is the view of this court that the Plaintiff has proved her case to the required standard considering the circumstances herein being that the suit plot is untitled. Her evidence is clear that she obtained he suit land by purchase from the original allottee.
17. In the final analysis, judgment is hereby entered for the plaintiff against the defendants as prayed in the plaint. The defendants are jointly and severally condemned to pay costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

2<sup>nd</sup> Defendant (Daniel Sibwari)

Njiraini for Plaintiff

Court assistant: Vanilla

