



**Mwangi v Kuria & 3 others (Environment and Land Case
200 of 2009) [2023] KEELC 17802 (KLR) (30 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17802 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 200 OF 2009
CA OCHIENG, J
MAY 30, 2023**

BETWEEN

AGNES WAITHERA MWANGI PLAINTIFF

AND

DENNIS M KURIA 1ST DEFENDANT

DENOIL KENYA LIMITED 2ND DEFENDANT

**DAVID KILONZO (SUED IN HIS CAPACITY AS THE CHAIRMAN OF KASINA
HOUSING SCHEME SOCIETY) 3RD DEFENDANT**

MAVOKO MUNICIPAL COUNCIL 4TH DEFENDANT

JUDGMENT

1. By a plaint dated the 30th June ,2009, the plaintiff prays for judgement against the defendants for;
 - a. A declaration that the parcels of land known as Plot Number 8 Phase II C and Plot Number 9 Phase II C located within Mavoko Municipality belong to the Plaintiff.
 - b. A Permanent Injunction to issue restraining the Defendants whether acting by themselves, their servants and/or agents or by any authority under their express or implied authority from evicting the Plaintiff from, trespassing on, entering on, dealing with, taking possession of or in any other way interfering with the Plaintiff's quiet possession of parcels of land known as Plot Number 8 Phase II C and Plot Number 9 Phase II C located within Mavoko Municipality.
 - c. Costs of this suit.
 - d. Any other further relief that this Honourable Court may deem fit to grant.
2. The 1st and 2nd Defendants filed their Statement of Defence dated the 17th February, 2021 where they contended that the Plaintiff is not the owner of Plot Nos. 8 Phase II C and 9 Phase II C within



- Mavoko Municipality. They admitted that they entered plot nos. UNS BCR Plot 2 and Plot No. USC BCR Plot 1 and not Plot Nos. 8 Phase II C and 9 Phase II C. Further, that Mavoko Land Development Company Limited were the owners of land reference no. 11895/27 from which their plots were subdivided. They confirmed holding Letters of Allotment in respect to their plots. They explained that Justice Angote vide a Judgment delivered on 31st May, 2019 in Machakos ELC No. 366 of 2009 found that land parcel number 11895/27 belonged to Mavoko Land Development Company Limited from which they obtained titles to their respective plots.
3. The 3rd Defendant filed its Statement of Defence dated the 25th February, 2015 denying the averments in the Plaintiff and insisting that the alleged plots were non-existent. Further, that the allocation of the alleged plots was unlawful as the land did not belong to the allotting authority. It denied that the Plaintiff had any documents of title in respect to the suit plots and that the 4th Defendant did not convey any title to her. It denied that its agents entered the suit plots on 23rd February, 2009 and tampered with beacons. It contended that at all material times it is the registered owner of land parcel number LR 11895/27 at Mlolongo, which was subdivided and allocated to members among them, including the 1st and 2nd Defendants. Further, that at various times persons claiming to be members of Mavoko Quarry Site Self Help Group trespassed on land belonging to its members culminating in various law suits including Machakos HCCC No. 160 of 2008, HCCC 121 of 2006 and ELC 366 of 2009 respectively. It explains that there has been a longstanding boundary dispute between Land Parcel Number LR 11895/27, LR 11895/8 which is pending determination in Machakos ELC 366 of 2009. It sought for the suit to be dismissed.
 4. The matter proceeded for hearing where Plaintiff and Defence each had one witness.

Evidence of the Plaintiff

5. The Plaintiff as PW1 adopted her Witness Statement dated the 3rd November, 2017 as her evidence in chief and testified that the Defendants had encroached on her two parcels of land which are Plots Nos. 8 Phase II C and Plot 9 Phase II C within Mavoko Municipal Council (hereinafter the “suit plots”). She confirmed that she had Certificates of Ownership issued to her by the Mavoko Land Development Co. Ltd. It was her testimony that on 29th February, 2009 officers from Kasina Housing Company unlawfully entered into the suit plots, interfered with the beacons already put in place and replaced them with their own as well as encroached on her plots. She stated that despite efforts to stop the encroachment, the trespassers still remain in the suit plots. She testified that she wanted to settle the matter out of court but had changed her mind. She knew the 1st Defendant very well as they were neighbours. She further testified that the 3rd Defendant did not sell to her any plot. She explained that the police verified that the suit plots belonged to her. On re-examination she stated that it is Mavoko Land Development Limited that sold her the suit plots. The Plaintiff produced the following documents as exhibits: Agreement for sale dated 11th October, 2002, Copy of Cheque No. 618094, Letter dated 2nd March, 2003, Copy of Mark Kimanthi Muendo’s National Identity Card; Temporary Occupation Licence dated 11th October, 2002 for Plot No. 8 Phase 11 C, Ownership Certificate over Plot No. 8 Phase 11 C, Sale Agreement dated 9th May, 2007, Letter dated 2nd September, 2003, Copy of James Maina Kimani’s National Identity Card, Temporary Occupation Licence dated 9th September, 2003 for Plot No. 9 Phase 11 C, Receipt dated 2nd September, 2003, Receipt No. 11026 dated 2nd September, 2003, Receipt No. 50 dated 29th January, 2009, Transfer application form dated 9th May, 2007, Receipt for Transfer fee from Municipal Council of Mavoko, Receipt No. 1645 dated 29th January, 2009, Receipt No. 1646 dated 29th January, 2009, Ownership Certificate over Plot No. 9 Phase II C, Receipt No. 10210 dated 11th October, 2002, Receipt No. 10298 dated 11th October, 2002, Receipt from Municipal Council of Mavoko for rent dated 23rd January, 2007, Receipt from Municipal



Council of Mavoko for rent dated 3rd May, 2007, Letter dated 24th February, 2009, Letter dated 9th June, 2009, Enforcement Notice dated 16th June, 2009, Letter dated 19th June, 2009 and Survey map.

Evidence of the Defendants

6. The 1st Defendant as DW1 Mr. Dennis Kuria stated that he is a transporter and Petroleum dealer and adopted his Witness Statement dated the 17th February, 2021 as his evidence in chief. He confirmed that he is the Director of the 2nd Defendant which is the owner of Plot Nos. UNS BCR No. 1 and UNS BCR No. 2 at Kasina in Mlolongo, Machakos County by virtue of Letters of Allotment Numbers 39711/A/I and 3911/A/I dated 14th December, 2007 and 1st January, 2008 respectively from the Government of Kenya. He testified that before allotment of the said plots to the 2nd Defendant, he had been a member of Mavoko Land Development Company Limited vide Plot ownership Certificates Nos. 1035 and 1037 which company is the owner of Land Parcel Number 11895/27 from which these Letters of Allotment were made. It was his testimony that in May, 2009 he intended to fence off the 2nd Defendant's pieces of land when he discovered that the Plaintiff was illegally occupying the said land. DW1 stated that the Plaintiff's plots do not exist and he denied trespassing into the Plaintiff's plots as he had Letters of Allotment in respect to his parcels of land. He denied building on the Plaintiff's property but insisted that he had developed his properties. On Re-examination he stated that in the letter dated 9th June, 2009 the name of the Plaintiff did not appear. He sought for costs.

The 3rd and 4th Defendants Never Tendered Any Evidence in This Suit.

7. The 1st and 2nd Defendants produced the following documents as exhibits: Copy of Title No. IR84437 (LR. No. 25062) in the names of Veldji Jadwa Varsani, Namubhai Velji Varsani, Khamji Velji Varsani dated 17th August, 2000, Copy of Title No. IR53390 (LR. No. 11395/27) in the names of Kasina Housing Scheme Society dated 17th November, 1992, Judgment of Hon. Justice O. A. Angote in Machakos ELC. No. 366 of 2009 delivered on 31st May, 2019, Letter of Allotment dated 1st January, 2008 addressed to Denoil (K) Limited, Letter of Allotment dated 14th December, 2007 addressed to Denoil (K) Limited, Clearance Certificate dated 26th February, 2009 from Mavoko Municipal Council, Clearance Certificate dated 26th February, 2009 and Notification of approval for Development Permission dated 26th May, 2009.

Submissions

Plaintiff's Submissions

7. The Plaintiff in her submissions reiterated her evidence as presented. She argued that she had adduced evidence to demonstrate that she purchased the suit plots as per the documents attached in her bundle and the other Defendants did not adduce evidence on their behalf. She stated that she had proved her case and is entitled to the injunctive orders as sought. She sought to be awarded the costs of the suit.

1st 2nd and 4th Defendant's Submissions

8. The Defendants in their submissions stated that the Plaintiff's case is based on the fact that she is the registered owner of the suit plots and the Defendants have trespassed thereon. They argued that the Plaintiff's documents of title were not genuine and therefore she had not proved her case on a balance of probability and it should be dismissed with costs. They referred to the Plaintiff's cross-examination where she stated that she had no claim against the 1st and 2nd Defendants plots and that her issue was only on the cost of the suit.



Analysis and Determination

9. Upon consideration of the Plaintiff, Statements of Defence, witnesses' testimonies, exhibits and rivalling submissions, the following are the issues for determination: Whether the Defendants have trespassed on the Plaintiff's plots? Whether the Plaintiff is entitled to the orders sought in the Plaintiff. Who should bear the costs of the suit.
10. As to whether the Defendants have trespassed on the Plaintiff's plots. The Plaintiff claims the 1st and 2nd Defendants trespassed on her land, tampered with beacons and the 1st Defendant constructed thereon, which fact is disputed by the Defendants. PW1 in her testimony stated that she had quiet possession of the suit plots until 29th February, 2009 when officers from Kasina Housing Company unlawfully entered the two plots of land, interfered with the beacons already put in place, replaced them with their own and encroached on her land. The 4th Defendant in their Statement of Defence dated 17th February, 2021 denied that the Plaintiff is the owner of the suit plots and argued that if indeed the said plots existed, then they belong to the 1st and 2nd Defendants. Before I proceed to make a determination on whether the Defendants had trespassed on the suit plots, or not, it is important to decipher the root of the titles to the respective plots claimed by the Plaintiff as well as 1st and 2nd Defendants. PW1 confirmed that she was issued with Certificate of Ownership by the Mavoko Land Development Co. Ltd. From the evidence presented, I note the Plaintiff purchased plots from persons who got them from the Mavoko Quarry Site Self Help Group and it is not clear how she obtained Ownership Certificate from Mavoko Land Development Co. Ltd which she produced as an exhibit. PW1 did not indicate whether her plots were from the larger Land Parcel Number 11895/27 or not. It emerged in evidence that there is a road separating the Plaintiff's land and the 2nd Defendant's land. The Plaintiff intimated that she had sought to settle the matter but the 1st Defendant declined. The 1st Defendant confirmed that he had already developed his land. I note PW1 admitted that she had no dispute with the 1st and 2nd Defendants but only sought for costs. The 1st and 2nd Defendants claimed ownership of Plot Nos. UNS BCR No. 1 and UNS BCR No. 2 at Kasina in Mlolongo, Machakos County by virtue of Letters of Allotment Nos. 39711/A/I and 3911/A/I dated 14th December, 2007 and 1st January, 2008 respectively. DW1 testified that before allotment of the said plots to the 2nd Defendant, he had been a member of Mavoko Land Development Company Limited vide Plot ownership Certificates Nos. 1035 and 1037 respectively. Further, that the said company is the owner of Land Parcel Number 11895/27 from which the Letters of Allotment emanated from. This court takes judicial notice of the fact that in aforementioned Machakos ELC No. 366 of 2009 (*Mavoko Land Development Co. Ltd v Kasina Housing Scheme Society & 4 others*) Justice Angote in his Judgment delivered on 31st May, 2019, held that:-
 - a. A declaration be and is hereby issued that the 1st Defendant's Leasehold Title LR No. 11895/27 Mavoko Municipality bearing the names 'Kasina Housing Scheme Society' is fake, null and void.
 - b. A mandatory and/or permanent injunction be and is hereby issued directed to the Defendants, their members, servants, employees and agents to stop encroaching, trespassing into, destroying the boundaries, constructing shelters, erecting temporary or permanent structures, or interfering with the Plaintiff's properties and quiet possession in all that parcel of land, LR No. 25062, Mavoko Municipality.
 - c. An independent Surveyor be appointed and directed to show survey beacons of LR No. 22062 Mavoko Municipality for the Plaintiff to put a permanent fence on the Plaintiff's parcel of land LR No. 25062.



- d. That the re-survey conducted by the Director of Survey on land parcel LR No. 25062, Grant IR 84437 with a Deed Plan No. 231422 attached to the said title 25062, and as appearing on the re-survey map registered and dated 14th December, 2007 with file Ref. No. CR. 34/52/72, computation No. 55575 and Field No. W. C be and is hereby declared null and void for infringing and violating the Plaintiff's rights of ownership of property.
 - e. That land LR No. 25062, Grant I.R 84437 and its attached Deed Plan No. 231422 its size, beacons, boundaries, shape or form be restored and maintained as it was appearing before the re – survey and as appearing in the Deed Plan No. 231422 and attached to the said Leasehold Title No. 25062.
 - f. Costs and interest of this suit to be paid by the Defendants.
12. The Plaintiff did not controvert the averments that the 2nd Defendant's plots emanated from LR No. 11895/27 which was owned by Mavoko Land Development Company Limited as declared in the aforementioned Judgment. Further, the 2nd Defendant holds Letters of Allotment to its two plots and is currently processing the titles. The Plaintiff in her testimony failed to demonstrate the nexus between her plots and LR No. 11895/27 nor produce a Survey Plan to confirm location of her plots. Further, from the Sale Agreements including receipts, I note she made certain payments to Mavoko Quarry Site Self Help Group on various dates in 2002. Further, as per letter dated the 2nd March, 2003 and 2nd September, 2003, Mavoko Quarry Site Self Help Group confirms Plot 8 II C and Plot 9 Phase II C have been transferred to the Plaintiff. The Plaintiff has not explained how she obtained Ownership Certificate for Plot 9 Phase II C from Mavoko Land Development Co. Ltd and yet she purchased her two plots from members of the Mavoko Quarry Site Self Help Group. Further, in all the documents she presented in court, there is none bearing the parcel number where her plots emanated from. Based on the evidence before me, I find that the Plaintiff has failed to prove that the Defendants trespassed on her plots.
13. It is against the foregoing that I find the Plaintiff has not proved her case on a balance of probability and will proceed to dismiss it with costs to the 1st, 2nd and 3rd Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 30TH DAY OF MAY, 2023

CHRISTINE OCHIENG

JUDGE

