



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC CIVIL SUIT NO 1310 OF 2013

KASARANI SETTLEMENT LIMITED.....PLAINTIFF

VERSUS

MARGARET WANGECHI WACHIRA.....DEFENDANT

JUDGEMENT

Background.

1. The Plaintiff filed this suit against the Defendant claiming the following reliefs:-

a) An order that this Honourable Court be pleased to issue a permanent injunction restraining the Respondent, his servants and/or agents from unlawfully occupying ,intimidating and/or evicting or threatening /interfering/tampering/tampering in any manner whatsoever with the Plaintiff's quiet occupation and enjoyment of suit premises to wit plot No.165 being part of LR No.14235 Nairobi, Kasarani.

b) Costs of suit,

c) Any relief that the Court deems fit to grant.

2. The subject matter of this suit is plot No.165 (suit property) which is comprised in **LR No.14235** which is **7.534** hectares. **LR No.14235** was originally owned by Research and Development Forum for Science Led Development in Africa a body corporate duly incorporated under the provisions of the Trustees Perpetual Succession Act Cap 164 Laws of Kenya. From a search of the title for **LR No. 14235**, it appears that this property has been a subject of a number of cases in the High Court. The main title was registered in the name of the Plaintiff on 15th January 2008.

3. The main title that is LR No. 14235 was charged to ABN Amro Bank by trustees of the registered owner. In or around 2004, a group calling itself Kasarani Resettlement Project under the leadership of Bishop Gaitho who was a KANU Operative started selling portions of the land to individuals and KANU Youth Wingers on the Pretext that Retired President Moi had given them the land to settle people. Various people purchased their respective portions and settled on their portions in or around 2004 through Public Auction.

4. In 2007, the land was put up for sale through public auction Kasarani Resettlement project participated in the said auction but they did not emerge the highest bidder. The person who emerged the highest bidder appeared to have chickened out of the deal. The auctioneer then called Kasarani Resettlement Project and asked its officials whether they could raise the money required. The officials of Kasarani Resettlement Group mobilised its members who had already plots on the ground and asked them to contribute Kshs.175,000/= each in order to purchase the property.

5. As Kasarani Resettlement Project was not a registered entity which could hold land, the officials were advised to incorporate a company. Some members converged at Kasarani Sports View Hotel where members decided to transform Kasarani Resettlement Project into a company called Kasarani Settlement Limited which was to own the main title for purposes only of facilitating processing of titles to individual members. The Plaintiff Company was incorporated on 13th August 2007. The land was then transferred to the Plaintiff Company on 15th January 2008.

Plaintiff's Case.

6. It is the Plaintiffs case that the suit property is owned by the Plaintiff and that the Defendant does not own the same. The Plaintiff claims that it was given a certificate of ownership in respect of the suit property on 11th March 2013. Around the time the Plaintiff was given

certificate of ownership in respect of the suit property, the Defendant came and started laying claim to the suit property. The matter was reported to Kasarani Police Station Vide OB Number 70/31/07/2013. The Defendant's fence of corrugated iron sheets was brought down by the Plaintiffs members. The Defendant came and put up a stone perimeter fence and accused the chairman of the Plaintiff company of being behind the demolition. When the chairman of the Plaintiff went to report the activities of the Defendant to the same police station, the police advised him to file a civil case hence this suit.

Defendant's Case.

7. The Defendant's case is that she purchased the suit property on 17th November 2004 from George Muthee Kinungi . She paid Kshs.320,000/= . The Suit property had been allocated to KANU Kahawa Ward Youth Group of which George Muthee Kinungi was a leader. The Plaintiff was given a certificate of ownership by Kasarani Resettlement Project which was overseeing the settlement of those given plots. The Plaintiff then paid Kshs.5,000/= to Savanna Land Surveyors who had been contracted to sub divide **LR 14235**.

8. The Defendant testified that the Plaintiff Company was only incorporated for purposes of pursuing titles and not to own plots. When the property that is LR No. 14235 was put up for sale by public auction , plot owners were asked to make payments of Kshs.175,000/= . The Defendant paid Kshs.100,000/= on 7th July 2008 to the lawyers of the Plaintiff Company M/s Kinyua, Mwaniki & Wainaina Advocates. On 18th January 2009 the Defendant made a further payment of **Kshs.75,000/=**. She was issued a receipt by the Plaintiff Company. This money was for processing of title.

9. When the management of the Plaintiff Company changed, the new directors made further demands ostensibly to process titles. The Defendant made a total of **Kshs.60,000/=** which was deposited into the account of the Plaintiff. The first instalment was made on 1st August 2010 and the second one on 17th August 2010. The Defendant states that despite making all the required payments, the Plaintiff has not processed title but instead one of the Plaintiff's directors led a group of persons who came and demolished her iron sheets fence which she had erected on the suit property. The Defendant contends that this suit was filed by the Company but that it is one of its directors Mr George Gatheca Muthee who is out to take the suit property.

10. I have considered the evidence adduced by the Plaintiff as well as the evidence of the Defendant. The parties had been directed to put in written submissions on 21st February 2019. As at 22nd October 2019 when the date of Judgement was reserved, the parties were given 30 more days but as at the time of writing this judgement, no submissions had been filed and if any were filed, then they are not in the file. The only issue for determination in this case is on who is the owner of the suit property.

11. The Plaintiff Company was incorporated on 13th August 2007 and LR No. 14235 was transferred to the company on 15th January 2008. There is no contention that as at the time LR No.14335 was transferred to the company, there were people who had been given plots. The plots were being sold to individuals under Kasarani Re settlement Project. The minutes of a meeting held on 12th August 2007 at Sports View Hotel Kasarani are clear on how a Limited Liability Company was to be incorporated. That is how the Plaintiff Company was incorporated. The company was to take care of the interest of all the members. The company was not to purchase any plot for itself.

12. The Plaintiff produced an ownership certificate No.0135 dated 11th March 2008 which shows that it is the owner of plot No.165. As at the time the company purported to allocate itself a portion of what was already registered under its name, the Defendant had long been recognized as the owner of the same plot having been given a certificate of ownership by Kasarani Settlement Project on 17th November 2004 before the project became a limited liability company. The Plaintiff Company continued to receive money from the Defendant and issuing receipts in the company name. The Plaintiff cannot therefore turn round and claim ownership of the suit property.

13. The Defendant called DW2 Jane Wambui Karuga who confirmed that plot 165 is owned by the Defendant and that each plot owner had been asked to pay Kshs.175,000/= to clear the loan which was outstanding . Even the Plaintiff concedes that members had been asked to pay money towards settlement of the loan which was owed to ABN Amro Bank. I therefore find that the suit property belongs to the Defendant. The upshot of this is that I find that the Plaintiff has failed to prove its case. The same is hereby dismissed with costs to the Defendant.

Dated, Signed and delivered at Nairobi on this 23rd day of January 2020.

E.O.OBAGA

JUDGE

In the presence of:

Mr Kosgei for M/S Nduta for defendant

M/S Mukiri for Mr Gachomo for plaintiff

Court Assistant: Hilda

E.O.OBAGA

JUDGE