



REPUBLIC OF KENYA



**Nzeghe v Nyarangi (Environment and Land Case Civil Suit 195 of 2012)
[2023] KEELC 20375 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20375 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 195 OF 2012
LN MBUGUA, J
SEPTEMBER 28, 2023**

BETWEEN

STELLA MUNANYE NZEGHE PLAINTIFF

AND

CHARLES NYARANGI DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit by a plaint dated 3.4.2012 claiming that she is the owner of all that parcel of land known as LR No Tassia-11-97/0993/498 having purchased it from National Social Security Fund (NSSF). She avers that the Defendant has encroached onto the said land without her permission. She therefore seeks judgement against the Defendant for;
 - a. An order that the Defendant be restrained from interfering with the Plaintiff's property known as LR No Tassia-11-97/0993/498 or any part thereof.
 - b. The Defendant be evicted from the suit land and be ordered to pay mesne profits to the Plaintiff.
 - c. Costs of this suit.
 - d. Any other order this Court may deem fit to grant.
2. The Plaintiff's claim is denied by the Defendant vide his statement of defence dated 29.6.2012. He avers that he is the owner of Plot No 0499 – Tassia which plot was allocated to him in the year 2001 by Kwa Ndege Self Help Group and he occupies the same.
3. During the trial, the Plaintiff, Stella Munanye Nzeghe testified as PW1. She adopted her witness statement dated 26.3.2012 as her evidence. She also produced the documents in her bundle dated 3.4.2012 as P. Exhibit 1-7. She states that on 4.8.2001, she was allocated plot No 0498 Tassia by Kwa



- Ndege Self –Help Group which was an agent of the National Social Security Fund. That on 7.9.2006, she paid Kshs 500/= application fees, then on 11.9.2006, she paid Kshs 100,000/= for the plot and was issued with a receipt. She made a further deposit of Kshs 150,000/= on 28.11.2006 together with a survey fee of Kshs 12,000/=:, and on 14.9.2006, she made a further payment of Kshs 65, 000/=.
4. She contends that sometimes in November 2011, the Defendant without her permission or authority encroached on the suit plot.
 5. Upon cross-examination, PW1 stated that she was shown the suit plot in 2001, her last instalment was on 28.9.2006 and that is when she took possession.
 6. She stated that the defendant trespassed onto the suit property in year 2002. There was a 2-roomed building on the suit plot. She reported the trespass to the chairman, Kwa-Ndege Self Help Group who referred her to the chief who in turn referred her to the police station, who in turn referred her to NSSF.
 7. PW1 contends that she is not aware that the Defendant was allocated the suit property earlier than her, adding that Plot No 0498 and 0499 are different. Hers is 0498 but she has not taken possession because of the encroachment by the Defendant.
 8. Upon re-examination, PW1 stated that the names in P. Exhibit 1 are those of officials of Kwa Ndege Self Help Group, being Chairman, Secretary and Treasurer. It was the group involved in allocation, while payments were made to NSSF where she paid a total of Kshs 327, 000/=.
 9. PW2 was Tobias Otieno Obado, an officer of NSSF at Tenant Purchase Scheme Department, Investment Division. He came to court with the file for plot No 97/0993/498 which appears as LR No 97/0993/498 and reads, TPS/T/97/0993/498 Tassia. The plot originally belonged to NSSF who sold it to the plaintiff, and is thus registered to her.
 10. He told the court that the Plaintiff completed the purchase of the suit land as per their statement which he produced as P. Exhibit 8.
 11. It was his testimony that their land was invaded by squatters.
NSSF later invited the squatters who had settled to register themselves with it, where one of the entities registering squatters was Kwa Ndege Self Help Group.
 12. He testified that payments reflected on the Plaintiff's receipts, P. Exhibit 2-5 all reflect in their statement regarding purchase of the suit plot. That the purchase price was Kshs 315, 000/= and the receipts add up to Kshs 327,000/=. He added that the Plaintiff has never transferred the suit plot to anyone else and that they have not yet issued leases for the plots.
 13. Upon cross-examination, PW2 stated that he is not sure if the suit land forms part of the land that had been invaded by squatters. He is not sure who the chairman of Kwa Ndege group is, but NSSF directly negotiated with squatters, so names of squatters were forwarded to NSSF. He pointed out that P. Exhibit 1 has a stamp from Kwa Ndege for Plot 0498. The same is similar to D. Exhibit 2 which is dated 20.3.2001 for Plot No 0499 issued to the Defendant but Plaintiff paid the full purchase price of the plot.
 14. He stated that before the squatters invaded Tassia land, it was not subdivided. It was eventually subdivided but he could not recall the year. He further stated that Plaintiff's name was forwarded by Kwa Ndege to NSSF and there was a request to register her.
 15. He stated that he does not know what No 0498 means for Kwa Ndege and he does not know how it translated on the ground, but NSSF had different plot numbers though they were converted from Kwa Ndege Group. The suit plot was registered as Block/0993/498.



16. Upon re-examination, PW2 stated that NSSF was not bound to accept a request for registration from Kwa Ndege group. He further stated that in all the Defendant's documents, none is from NSSF and for the letter dated 9.6.2006, it was not received by NSSF. He stated that for the suit plot, the application by the Plaintiff is dated 7.9.2006 while the communication by Kwa Ndege is a certificate dated 2001 and a forwarding letter dated 6.9.2006.
17. The Defendant, Charles Nyarangi testified as called as DW1. He adopted his witness statement filed on 29.6.2012 as his evidence. He produced the documents in his list dated 29.6.2012 as D. Exhibit 1-10.
18. DW1 avers that he was allocated 2 plots being Plot No 0499 and 0473 by Kwa Ndege self-help Group. That he managed to register Plot No 0473 and while in the process of registering parcel 0499, all registration was temporarily stopped by NSSF which was registering the plots. However, when the ban for registration was lifted, he discovered that Parcel No 0499 had been fraudulently registered to the Plaintiff.
19. He states that he has been in occupation of the plots since 2001 and he has constructed a 3 roomed house thereon at a cost of Kshs 800,000/=. He has also paid for the supply of water and sewerage.
20. Upon cross-examination, DW1 stated that he bought 2 plots from Kwa ndege being Plot No 0473 and 0499 which are adjacent to each other and which he has developed. The purchase price was Kshs 100,000/= each. That for plot 473, it is registered with NSSF and is fully paid up.
21. He stated that while buying the plot from Kwa Ndege group in 2001, the group had a survey map of the area which was prepared by the chairman and his team, but there was no Certificate of title, so he did not conduct a search and he did not know that NSFF owned the mother title.
22. He stated that when the local administration was called in 2003-2004, that is when they learnt that the land did not belong to Kwa Ndege group. He pointed out that D. Exhibit 1 is a receipt dated 28.11.2001 which shows he paid for registration to Kwa Ndege welfare.
23. He stated that in 2003, NSSF told them that it would engage with Kwa Ndege and regularize their settlement, but he has no receipts showing that he made any payments to NSSF after he discovered that the land belonged to NSSF.
24. He pointed out that amongst his 10 exhibits, he has no receipt evidencing he paid the purchase price and that the receipts he has are issued to one Ben Otinga. He pointed out that he had nominated the said Otinga to represent him as he would frequently travel out of the country.
25. He stated that in year 2006, NSSF put a caveat in the newspaper stopping all registration of plots, thus his plot was not registered with NSSF.
26. DW1 also stated that as things stand, he does not have ownership documents for plot 499 from NSSF but as per Kwa Ndege records, he owns the said plot but he has not filed any claim against Kwa Ndege or NSSF.
27. He also stated that he has never gotten an opportunity to pay money to NSSF in respect of Plot No 499 and as such, he has no receipts from NSSF but the Plaintiff purchased hers from NSSF. He added that he does not know that on the ground, plot 499 is 498. He added that NSSF did not conduct a survey, it just adopted Kwa Ndege's Plot numbers then later added the name Tassia/97 to the plots.
28. Upon re-examination, DW1 stated that he could not register plot 499 because when he went to register it with NSSF, he was told that it belongs to the Plaintiff.



29. He also stated that save for receipts for registration with Kwa Ndege of Kshs 4700 /=-, they were not issued with any other receipts by Kwa Ndege who were a cahoots of invaders. He added that he built a house on the suit land in 2003-2004 which he occupies to date.
30. The submissions of the plaintiff are dated 24.5.2023 where she asserts that she owns plot known as Tassia-11-97/0993/498. She contrasts her evidence with that of the Defendant and points out that while he claims to own plot Number 473 and 499, he produced documents which show that the plots were paid for by one Otinga to Kwa Ndege Self Help group and not NSSF as required. She argues that the said Ben Otinga was not called to clarify the relationship between him and the Defendant.
31. The plaintiff submitted that the Defendant's claim that the Plaintiff fraudulently registered Plot No 498 at a time when NSSF had stopped registration was not proved. Further, the Defendant did not prove any particulars of fraud to the required standards save to say that the Plaintiff's registration was fraudulent. To this end, she relied on the case of *LWN v PLM & 3 others* [2021] eKLR.
32. The Plaintiff also argues that while the Defendant claims to have constructed a house worth Kshs 800,000/= on the suit land, he did not produce any iota of evidence to prove the alleged fact and if he has constructed a house thereon, he did so with full knowledge of the Plaintiff's claim.
33. It is also submitted that assuming there was double allocation of the suit plot, the Plaintiff was the 1st to be registered with Kwa Ndege group as per her P. Exhibit 1, thus the Plaintiff was the 1st allottee, hence her registration should rank in priority to that of the Defendant. She relies on the case of *Republic v City Council of Nairobi & 3 others* [2014] eKLR.
34. The Defendant did not file any submissions.

Determination

35. The questions falling for determination is; who owns the suit plot, identified by the plaintiff as LR No Tassia-11-97/0993/498, while the defendant identifies the same as plot 0499, and what relief is available to the parties. At this juncture, it is pertinent to note that none of the protagonists appears to have a title to the suit land. However, both of them appear to be in agreement that the land was owned by NSSF.
36. In the case of *Naftali Rutbi Kinyua v Patrick Thuita Gachure & another* [2015] eKLR, the court stated that;

“When the appellant's documents are compared with those of the 1st respondent, what is apparent is that the appellant's attempts to secure proprietorship of the suit property were earlier in time than that of the 1st respondent.”
37. The question that the court will be dealing with is; who as between the plaintiff and the defendant attempted first to secure rights of proprietorship in respect of the suit property.
38. Both protagonists claim that the entity which allocated them the land was known as Kwa Ndege. To this end, PW1 was allocated Plot No 0498 and was issued with a certificate on 4.8.2001. Defendant too was issued with a certificate by the same entity on 20.3.2001 for plot 0499.
39. However, the entity known as Kwa Ndege did not own the suit land and were in essence invaders. Thus claimants of the suit land had to regularize their interests with the real owners who is the NSSF.



40. PW2 confirmed that the Plaintiff took steps to regularize her Plot No 0498 by making the required payments which PW1 produced as P. Exhibit 2-5 and were confirmed by PW2 who produced an NSSF statement as P. Exhibit 8 confirming that the plaintiff paid the purchase price for the suit plot.
41. The defendant admitted during cross-examination that he did not pay NSSF anything. He has no receipts evidencing such payments either. His averment that he was in the process of registering Plot No 0499 when registration was temporarily stopped by National Social Security Fund and that it is during that time that the Plaintiff fraudulently registered land parcel LR No Tassia-11-97/00993/498 was not proved.
42. The Plaintiff has proved on a balance of probability that she owns the suit plot and is therefore entitled to protection from this court.
43. What relief is available to the parties? The plaintiff has established that the Defendant is a trespasser as defined in *Zacharia Onsongo Momanyi v Evans Omurwa Onchagwa* [2014] eKLR. However, she has not given an account of the probable profits she could have acquired from the suit land. I will hence not give an award of damages.
44. In the final analysis, I allow plaintiff's claim in the following terms.
 1. An order is hereby issued to the effect that the plaintiff is the owner of the suit plot LR No Tassia-11-97/0993/498.
 2. An order is hereby issued for the eviction of the defendant from the suit plot LR No Tassia-11-97/0993/498 and to this end, the defendant is given 45 days to vacate the said land.
 3. The defendant is condemned to pay costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

