



REPUBLIC OF KENYA



**Wainaina v Mwago & 3 others (Environment & Land Case E297 of 2021)
[2023] KEELC 21728 (KLR) (16 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21728 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E297 OF 2021**

JA MOGENI, J

NOVEMBER 16, 2023

BETWEEN

STANLEY KARIUKI WAINAINA PLAINTIFF

AND

CHIEF LAND REGISTRAR 1ST DEFENDANT

JOSEPH MWANGI MWAGO 2ND DEFENDANT

HON ATTORNEY GENERAL 3RD DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED 4TH DEFENDANT

JUDGMENT

1. By a Plaint dated 22/06/2021, filed herein by Stanley Kariuki Wainaina (the Plaintiff) prays for judgment against the Defendants jointly and severally for:
 - a. A declaration that the plaintiff is the rightful owner of the land L.R.No. Nairobi / Block 136/9496.
 - b. An order cancelling the entry of Joseph Mwangi Mwago as the owner of L.R.No. Nairobi Block 136/9496.
 - c. An Order directing the Chief Land Registrar to immediately cancel the registration of the 1st Defendant as the owner of the Land L.R. No. Nairobi Block136/9496 and to immediately register the Plaintiff as the owner of the said Land L.R. No. Nairobi Block136/9496.
 - d. An order of permanent injunction directed against the defendants jointly and severally, their servants or agents and/or employees from alienating, interfering, disposing, charging and/or interfering with the Plaintiff's properties L.R. No. Nairobi Block136/9496 and L.R. No.



Nairobi Block136/9497 in any manner howsoever and or otherwise dispossessing the said parcels of land from the Plaintiff or his persona' representatives and/or heirs.

- e. Cost of this suit and interest thereon.
- f. Any other order or further relief which this Honourable Court deems fit and just to grant.

Plaintiff's Case

2. PW1 adopted his statement dated 8/11/2021 where he stated that he is a retired civil servant.
3. It was his evidence that in 1978 he bought a plot form Embakasi Ranching Company and that he is an original shareholder and his number is 3578. That he bought two plots which were adjacent to plots T127 and T128 which are currently registered as Block 136 parcel number 9496 and 9497. He testified that he realized that the first plot number 9496 was transferred by the Registrar's office to one Joseph Mwangi Mwago and the second plot in his name.
4. It was his testimony that he occupied the two plots by fencing them off in 2006 with a stone wall when he settled on the said plots. He stated that he has constructed a stone wall on the said plots and he is rearing cattle on the suit premises, the plots. The stone house is constructed on plot number 9496.
5. He testified that he prays that the name of the stranger should be removed from plot number 9496 since the second plot bears his name. He stated that he has the original documents which he produced through his list of documents and he also produced a letter that he wrote to the Chief Land Registrar and the Permanent Secretary inquiring about the ownership of the plot but he testified that he did not receive any response.
6. In cross-examination by the Counsel for the 2nd and 3rd defendants, he testified that he got to know that his plot had been allocated to someone else when he accessed the list that was sent to the Ministry of Lands. The list was forwarded by Embakasi Ranching and it was uploaded on the Embakasi Ranching website. He testified that the plot number 9496 was registered in the name of the 1st defendant and that he saw the lease certificate in the name of the 1st defendant.
7. In re-examination he testified that he signed a certificate of lease for the two plots 9496 and 9497 after clearing the payment for the lawyers as per the document number 17 on his list of documents. He stated that the payment for title number 9497 is cleared but he has not received the land title document because there is a court case. He further stated that the lease for plot number 9496 was processed in the 1st defendant but he does not know if the title has been processed. With this the plaintiff closed his case.
8. The counsel for the 2nd and 3rd defendant they had not filed any documents in court and they were not going to call any witnesses and she sought to close her case but the court directed that she ensures that the Director of Land Administration was to be summoned and the Chief Land Registrar. proceeded and closed the case for the 2nd and 3rd defendants. At the same time the Court directed that the 1st defendant is served again through substituted service due to the fact that land matters are sensitive and all parties should be given a chance to have their side of the story heard. The matter was adjourned to 27/03/2023.
9. The defence case did not proceed on 27/03/2023 due to the fact that there were "mandamanos" and the witnesses could not leave their houses and so the counsel for the defendants prayed that the matter be heard on 12/07/2023. On the date of the hearing only the plaintiff turned up in court and moved that the defence case be closed in view of the fact that none of the defendants were in court. The court proceeded and closed the defendant's case and reserved judgment for 16/11/2023.



Analysis And Determination.

10. The issue for determination is whether the Plaintiff has proved that he is the rightful owner of the suit properties. This is an undefended case therefore the Plaintiff's evidence is uncontroverted.
11. The Plaintiff has given the history and chronology of events on how he got ownership of the suit properties. It was the Plaintiff's evidence that he owns plot numbers 9496 and 9497 having been allotted the plots by Embakasi Ranching Company Limited.
12. It is not in dispute that the Plaintiff is an original shareholder in Embakasi Ranching Company Limited with share certificate number 3578 and that he was allocated two plots numbers T127 AND T128 listed as numbers 9496 and 9497. He has developed the two plots which he has occupied and has built a home on one plot and he rears cows on the other plot.
13. The plaintiff however learnt surprisingly that plot number T127 which is now parcel number LR No Nairobi/Block 136/9496 was registered under unclear circumstances to the 1st defendant one Joseph Mwangi Mwago ID No. A 1056604. He stated that the parcels listed on the Ministry of Lands' List of Members for Issuance of Leases for Embakasi Ranching Co. Limited, show his name is reflected as the one owning the two suit properties as Serial Number 6161 T127 plot 9496 belonging to Stanley Kariuki Wainaina and Serial Number 6162 T128 plot number 9497 belonging to Stanley Kariuki Wainaina. There is also no dispute that the Plaintiff has built a house and rears cows on the suit property.
14. The plaintiff has produced the letter from Embakasi Ranching confirming the allocation of the two plots to him dated 28/11/82 and he also produced the original letter. He also produced a copy of the Share Certificate and brought the original to court to authenticate his claim which shows that he is the registered holder of two ordinary shares. Further he produced a copy of the payment for the Beacon Certificate for plot numbers T127B and T128B. There was also receipts from Embakasi Ranching showing that the plaintiff received a dividend in the year 1979 for 2 stock units among other copies of the documents.
15. There seems to be a trend with the Embakasi Ranching Company to allocate the same parcel of land to several people and this seems to cause pain, suffering and myriad of court cases. Unsuspecting Kenyans are swindled of their hard earned money and investments. There are many people who want to reap where they have not sown. This trend is with many litigants who come to court and claim to either have been original shareholders at Embakasi Ranching or second or third owners from the original owners.
16. The other issue which is worrying is that the officers of Embakasi Ranching, Nairobi City County and the Chief Land Registrar's office fail to attend court to shade light on the mess they have created resulting in pain, sickness and sometimes death. One wonders how institutions operate in a country run by the rule of law get away with exploitation of poor people with no repercussions. The right to own property is protected under Article 40 of *the Constitution*. Therefore, I am at a loss as to how the mechanisms of promoting and protecting this right is left in the hands of unscrupulous mandarins resident in government institutions.
17. It is a high time the Executive Arm of Government set up processes to clean up their house. Indeed, the Judiciary's role is to interpret the law but the Judiciary is recently overloaded with the job of cleaning up house for the Executive who seem to play musical chairs with the rights of Kenyans. Shame on these officers, for failing to protect and serve the people who pay their salaries and enable you to live in comfort.



18. It is a pity that those charged with the responsibility to safe guard the title to right to property become the conniving parties yet they still earn a salary, eat, sleep and sit in their lofty offices knowing they are the source of pain to Kenyans who they are fleecing of their hard earned money. Allow me to digress abit, indeed as the good book says the “wages of sin is death” so even if one wants to amass own the whole of Kenya one day they will meet face to face with these words and hopefully confess before going to the other world to meet their maker knowing it was all vanity since no one has ever carried the ill amassed wealth including land to that other world from what I know.
19. Back to the case now, I have considered the pleadings, the evidence and documents produced and find that the Plaintiff has proved his case on a balance of probabilities and therefore enter Judgment in the following terms:
- I. A declaration be and is hereby issued that the plaintiff is the rightful owner of the land L.R. No. Nairobi / Block 136/9496.
 - II. An order is hereby issued cancelling the entry of Joseph Mwangi Mwago as the owner of L.R.No. Nairobi Block136/9496.
 - III. An Order is hereby issued directing the Chief Land Registrar to immediately cancel the registration of the 1st Defendant as the owner of the Land L.R. No. Nairobi Block136/9496 and to immediately register the Plaintiff as the owner of the said Land L.R. No. Nairobi Block136/9496.
 - IV. An order of permanent injunction is hereby issued restraining the defendants jointly and severally their servants or agents and/or employees from alienating, interfering, disposing, charging and/or interfering with the Plaintiff's properties L.R. No. Nairobi Block136/9496 and L.R. No. Nairobi Block136/9497 in any manner howsoever and or otherwise dispossessing the said parcels of land from the Plaintiff or his persona' representatives and/or heirs.
 - V. Cost of this suit are awarded to the plaintiff to be paid by the defendants jointly and severally.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF NOVEMBER, 2023.

MOGENI J

JUDGE

Judgment read in virtual court in the presence of:

Mr.Ng'ang'a for the Plaintiff

No appearance for the Defendants

