



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ELC CIVIL SUIT NO 89 OF 2008**

**GRACE WAMBUI WACHIRA.....PLAINTIFF**

**VERSUS**

**LAURA NYAMBURA KIRORO.....1ST DEFENDANT**

**KASARANI SETTLEMENT.....2ND DEFENDANT**

**PANCITY INVESTMENT LTD.....3RD DEFENDANT**

**FRANCIS KARIUKI.....4TH DEFENDANT**

**J U D G M E N T**

The Plaintiff's claim in this Court is contained in her plaint dated 28th February, 2008.

2. *The Plaintiff says at all times material to this suit, LR. No 14235 Nairobi Kasarani was Government Land which was given to landless people who were members of Kasarani Resettlement project managed by a committee headed by a Chairman one Bishop Gaitho and the Kasarani District Officer in his official capacity as a member of the resettlement committee.*
3. *The Plaintiff asserts that at all times material to this suit, the Plaintiff was a resident of Kasarani and a member of Kasarani Resettlement Project and on or about the month of September, 2002 the Plaintiff did qualify to ballot and did ballot for Plot No. 66 Kasarani Resettlement Project phase 3 and obtained a ballot No. 66 signed by the Chairman, one Bishop Gaitho.*
4. *The Plaintiff having balloted for the Plot No. 66 Kasarani Resettlement Project Phase 3 as above stated, the Plaintiff surrendered the original ballot No. 66 to the Committee of KASARANI RESETTLEMENT PROJECT and was issued with the ownership certificate dated 16th September, 2002 duly signed by the chairman BISHOP GAITHO and a committee member who at the material time was the District Officer Kasarani, one George Ayonga.*
5. *The Plaintiff continues to say that upon obtaining the certificate of ownership above stated, the Plaintiff was shown her plot No. 66 on site by the surveyor for KASARANI RESETTLEMENT PROJECT one Mr. FRANCIS M. KARIUKI and the Plaintiff immediately took possession of Plot No. 66 and fenced it using cider posts and barbed wire.*
6. *The Plaintiff says that sometime in the year 2007, members of KASARANI RESETTEMENT PROJECT formed a company called KASARANI SETTLEMENT LIMITED with a view to redeem the land the Plaintiff and other members were occupying when it came to the*

*members notice that the whole of L.R NO. 14235 Kasarani Nairobi was to be sold as a result of a Court Order in HCCC NO. 148 of 2007 at Milimani Commercial Courts.*

- 7. The Plaintiff asserts that subsequent thereto she paid 175,000/= by Bankers cheque to the Law firm of J.K Gachie & Associates acting for the decree holder in the aforesaid case.*
- 8. The Plaintiff says having paid the requisite Ksh. 175,000/= so as to redeem the Plot No. 66 which was part of L.R. NO 14235 Kasarani Nairobi, the Plaintiff commenced the construction of a perimeter wall round the said plot on or around 15th December, 2007 while awaiting for her title to be processed.*
- 9. The Plaintiff narrates that on or around 9th January, 2008 the Defendant went to the suit plot and unlawfully and without any claim of right committed acts of trespass upon the Plaintiff's Plot No. 66 and destroyed the Plaintiff's perimeter wall and carried away building stones, ballast, hard core, sand and structural steel bars which the Plaintiff had deposited on the plot to an unknown place.*
- 10. The Plaintiff says that the 1st Defendant claims to have bought the suit plot from the 2nd Defendant.*
- 11. The plaintiff claims that the 1st Defendant has without any lawful claim or justification taken possession of the suit land and intends to build thereon.*
- 12. She says that her claim against the 1st Defendant is for a Permanent Injunction restraining the 1st Defendant, her agents, servants and employees from trespassing and or continuing to trespass, dealing, alienating, selling subdividing and in any manner interfering with the Plaintiff's quiet enjoyment of the piece of land known as plot No. 66 being part of L.R NO. 14235 situated at Kasarani, Nairobi.*
- 13. The Plaintiff's further claim against the 2nd Defendant is for a permanent injunction to restrain the 2nd Defendant, its agents, servants and employees from trespassing and or continuing to trespass, dealing, alienating, selling subdividing processing title and or land transfer documents in favour of the 1st Defendant and in any manner interfering with the Plaintiff's quiet enjoyment of the Parcel of Land known as Plot No. 66 being part of the L.R No 14235 situated at Kasarani Nairobi.*
- 14. The Plaintiff opines that unless restrained by a permanent injunction by this Honourable Court from trespassing and or continuing to trespass on the suit land, the 1st Defendant intends to continue with her acts of trespass on the suit land.*
- 15. The Plaintiff's further claim against the 1st and 2nd Defendant is for a declaration that the Plaintiff is the lawful owner of Plot No. 66 being part of L.R. NO. 14235 Kasarani Nairobi.*
- 16. The Plaintiff avers that there is no other suit pending and that there have never been previous proceedings in any Court between the Plaintiff and the Defendants.*
- 17. For the above reasons: the Plaintiff prays for judgment against the 1st and 2nd Defendant jointly and severally for:-*

*(i) A declaration that the Plaintiff is the lawful owner of the Parcel of land known as Plot No. 66 being part of L.R NO. 14235 Kasarani Nairobi.*

*(ii) A permanent injunction restraining the 1 Defendant, her agents or servants from dealing, alienating, selling subdividing, trespassing and or continuing to trespass and or in any manner interfering with the Plaintiff's quiet enjoyment of the Plaintiff's parcel of land known as Plot No. 66 being part of L.R NO. 14235 Kasarani Nairobi.*

**(iii) A permanent injunction restraining the 2nd Defendant ,its agents or servants from dealing , alienating, selling ,subdividing and processing title and or land transfer documents in favour of the 1st Defendant and in any manner interfering with the Plaintiff's quiet enjoyment of the Plaintiff's parcel of land known as Plot No. 66 being part of L.R No 14235 Kasarani Nairobi.**

**(iv) Costs of this suit.**

18.The response to the Plaint is best demonstrated by the 1st Defendant's amended defence and Counter Claim dated 27th May, 2011 which among other things states the following:-

- i. The 1st Defendant is a stranger to the contents of paragraphs 5, 6, 7, 8, 9, and 10 of the Plaint and puts the Plaintiff to strict proof thereof.**
- ii. On 19/12/06 the 1st Defendant bought the suit property identified as plot No. 66 which is a sub-plot of LR. NO. 14235 at Kasarani from the 3rd Defendant who had allegedly bought the same from Kasarani re-settlement project and was issued with an ownership certificate.**
- iii. The 1st Defendant paid a sum of Kshs. One Million One Hundred Thousand (Kshs. 1,100,000/=) as purchase price as well as surveyors fees of Kshs. 20,000/= to Savanna Land Surveyors and received by the 4th Defendant herein who subsequently identified and showed her the plot aforesaid . The 1st Defendant therefore had every right to work and occupy my aforesaid plot.**
- iv. The 1st Defendant's ownership certificate was indeed signed by the Chairman and Secretary of the Kasarani Re-Settlement project as an authentic document.**
- v. That I have indeed taken possession of the suit property as a rightful owner and the contents of paragraphs 11, 13, 14, 16 and 17 of the Plaint are baseless and do not hold any truth.**
- vi. That the 1st Defendant has not been issued with any notice of intention to be sued and the instant suit has been filed prematurely.**
- vii. As a result of the matters raised herein, none of the prayers sought in the Plaint are capable of being granted and the same ought to be dismissed with costs.**
- viii. That the 1st Defendant avers that the Plaintiff's suit is fatally defective and same ought to be dismissed with costs.**
- ix. On or about 19/12/06, the 1st Defendant bought the suit property known as plot No. 66 out of the L.R No 14235 at Kasarani from the 3rd Defendant who in turn had allegedly bought the Property from Kasarani resettlement project. The 1st defendant avers that she was issued with an ownership certificate duly signed by the Chairman and Secretary of the Kasarani Resettlement project.**
- x. The 1st Defendant paid a total of Kenya Shillings one Million One Hundred Thousand (Kshs. 1,100,000) as purchase price to M/S PANCITY the 3rd Defendant as well as Surveyors fee of Kenya Shillings Twenty Thousand (Kshs. 20,000/=) to Savanna Land Surveyor and received by the 4th Defendant who subsequently identified and showed her the said plot. The 1st Defendant had since taken possession of the suit property as clearly admitted in the Plaint.**
- xi. The 1st Defendant is therefore the rightful owner of all the property known as plot No. 66 out of the larger LR. No 14235 Kasarani Nairobi and the 1st Defendant prays for a declaration by this Honourable Court that the 1st defendant is the rightful owner of the suit property being plot No. 66 out of the larger L.R NO. 14235 Kasarani.**
- xii. In the alternative the 1st Defendant prays for a refund of Kshs.1,120,000/= being the purchase**

***price and Surveyor's fees from the 3rd Defendant and 4th Defendant jointly and severally together with interest at 24% from date of purchase on 19/02/2006 till payment in full.***

xiii. ***REASONS WHEREFORE the 1st Defendant prays that the Plaintiff's suit be dismissed with costs and judgment be entered in counter-claim.***

19. The Plaintiff's evidence was more or less in congruence with what was contained in her pleadings. She asked the Court to adopt her witness statement dated 11 th March, 2014 as her evidence.
20. In her oral evidence and in her witness statement she testified that she was a resident of Kasarani Complex View Estate and also a member of Kasarani Resettlement Project. She testified that she qualified to ballot in phase 3 of the project and thus she balloted Number 66 and her ballot was signed by Bishop Gaitho who was the Chairman. Later on she surrendered her ballot to the project Committee and she was given a Certificate of Ownership for Plot No. 66 on Land Reference Number 14235. The Certificate was dated 16th September, 2002.
21. The Plaintiff told the Court that the 4th Defendant who was the project's Surveyor showed her the Plot and she fenced with cedar posts and barbed wire.
22. The Plaintiff avers that in the year 2007, the members of the Kasarani Resettlement Project learnt that the whole of Land Reference No 14235 was to be sold as a result of a Court Order in Milimani HCCC NO. 148 OF 2007. They resolved to form a Company called Kasarani Settlement Limited, the 2nd Defendant, so as to redeem Land Reference Number 14235. She subsequently paid a sum of Kshs. 175,000/= vide bankers Cheques through J.K Gachie & Company, Advocate.
23. After paying the required amount of money, the Plaintiff says that she embarked on developing her plot and erected a perimeter wall in 2007. She avers that unexpectedly on 9th January, 2008, the 1st Defendant moved in, destroyed her perimeter wall and carted away the materials claiming ownership of the plot.
24. The Plaintiff avers that she paid for her plot to the 2nd Defendant which had legal possession of the plot. She says that the 1st Defendant claims to have bought the same plot from the 3rd Defendant a Company in which the 4th Defendant was a Director. She says that the 4th Defendant who was a Surveyor hired by the 2nd Defendant had formed his own Company and had started issuing Ownership Certificates without the authority of the 2nd Defendant. She also says that the 4th Defendant had replaced the District Officer for the area as a signatory and had started selling plots belonging to the original allottees as in this case.
25. The Plaintiff testified that the 1st Defendant's claim over her plot was a nefarious scheme by the 4th Defendant to defraud her of her property. She says that the 4th Defendant was the project Surveyor who pointed out the Plot's beacons to her. She decried the fact that the 4th Defendant had received money from the 1st Defendant for the same plot when he knew very well that it belonged to her. She submitted that the 1st Defendant had no capacity to do so.
26. The Plaintiff told the Court that she had no claim against the 3rd and 4th Defendants as she had sued only the 1st and 2nd Defendants. She said that the 3rd and 4th defendants were brought in by the 1st defendant.
27. The Plaintiff told the Court that her Ownership Certificate issued by the 2nd Defendant, was dated 16/09/2002 whereas the 1st Defendant's Ownership Certificate issued by Pancity Investment Limited, the 3rd Defendant, was dated 19/12/2006, over 4 years later.
28. In her Oral evidence, DW1 the 1st Defendant, asked the Court to adopt her witness statement as her evidence. She asked the Court to dismiss the Plaintiff's suit. She told the Court that she bought

the suit plot from Pancity Investment Limited.

29. The 1st Defendant gave conflicting evidence. At first she said that after she had bought the Plot, someone moved in and fenced it. Then she changed her story and said that she fenced her plot in the year 2007. Then she changed her story and said that when she discovered that the plot had a fence. She did not demolish it. Then she said that she came to know that there was someone claiming the plot only when she was served with Court orders.
30. The 1st Defendant testified that she initially paid a sum of Ksh. 1,100,000 to Pancity Investment Limited, the 3rd Defendant, owned by the 4th Defendant. She then paid Kshs. 20,000/= as Survey fees. She showed the court the Certificate of Ownership issued to her by Pancity Investment Limited.
31. The 1st Defendant told the Court that she sued the 3rd and 4th Defendants because they had received her money. She said that the 4th Defendant, FRANCIS KARIUKI, claimed to be a director of Kasarani Development Scheme and was its Surveyor.
32. The 1st Defendant told the Court that she could not conduct due diligence regarding the information given to her by the 4th defendant, because the 4th defendant told her that the plot was not registered at the lands office.
33. The 1st Defendant told the Court that if it found that the suit plot did not belong to her, she wanted the Court to find that her Counter-claim had merit and grant her a refund of the purchase price, transfer fees, costs and interest.
34. During Cross examination she told the Court that she had bought the suit plot from Pancity Investment Limited. Confronted with a statement made by the 3rd Defendant that it had bought the plot from a couple called Leah Warutumo and John W. Wambugu and not from Kasarani Settlement, the Defendant conceded that her witness statement may have been incorrect. She told the Court that what was included in her witness statement was what Francis Kariuki had told her. She also admitted that Pancity Investment Ltd had been incorporated only 5 days before she bought her plot.
35. I have carefully considered the pleadings, the oral evidence and the Submissions proffered by the parties in support of their respective Submissions. The Defendant's evidence was riddled with contradictions. She purportedly bought the suit plot over 4 Years after a Certificate of Ownership was issued to the Plaintiff. She did not dispute that she was not a member of the 2nd Defendant, did not ballot for a plot and was not one of the original allottees.
36. The Plaintiff's evidence is clear. She was a member of the group that formed Kasarani Settlement and had paid a sum of Kshs. 175,000/= along with other members so that they could redeem their land as a result of a Court Order in Milimani HCCC NO. 148 OF 2007.
37. The 4th Defendant in his defence, which apparently subsumed the defence of the 3rd Defendant pleaded that the suit plot was allocated to Leah W. Warutumo and J.W Wambugu in the Year 2002. He says that what was the Plaintiff's plot was plot No, 46 and not the plot she was claiming. He says that Leah W. Warutumo and John W. Wambugu sold their plot to him in the year 2006.
38. The 4th Defendant avers that he performed his professional duties as a Surveyor diligently and properly and urges the Court not to allow the prayers in the 1st Defendant's defence and Counter-claim. The Defendant completely avoids to answer the Claim that he and the 4th Defendant sold a Plot to the 1st Defendant.
39. The 3rd and 4th Defendants, despite proper service, failed to participate in these proceedings. I find the 1st Defendant's Counter claim against them plausible.

40. I find that the plaintiff is the rightful owner of Plot No 66, being part of Land Parcel L.R. No 14235, Kasarani Nairobi. It is surreal, indeed bordering on phasmagoria, that after its incorporation, Pancity Investment Limited could sell a plot to the 1st defendant only 5 days later. The Plaintiff has proved on a balance of probability that she owns the suit property.

41. The 3rd Defendant has not defended the Counter-claim filed by the 1st Defendant. The 4th Defendant has not successfully defended the Counter-claim filed against him by the 1st Defendant.

42. I do not find the 2nd Defendant culpable in anyway.

43. I grant the following orders:-

1. ***It is hereby declared that the Plaintiff is the lawful owner of a Parcel of Land known as Plot No. 66 being part of L.R No. 14235, Kasarani, Nairobi.***
2. ***A permanent Injunction is issued restraining the 1st Defendant, her agents or servants from dealing with, alienating, selling, sub-dividing, trespassing and or continuing to trespass and or in any manner interfering with the Plaintiff's quiet enjoyment of the Plaintiff's parcel of land known as Plot No. 66 being part of L.R NO. 14235, Kasarani, Nairobi.***
3. ***A permanent injunction is issued restraining the 2nd Defendant, its agents or servants from dealing with, alienating, selling, subdividing and processing title and or land transfer documents in favour of the 1st Defendant and in any manner interfering with the Plaintiff's quiet enjoyment of the Plaintiff's parcel of land known as Plot No. 66 being part of L.R. No. 14235, Kasarani, Nairobi.***
4. ***Costs are awarded to the Plaintiff to be paid by the 1st Defendant.***
5. ***The 1st Defendant is awarded the sum of Kshs. 1,120,000/= to be paid to her by the 3rd and 4th Defendants, jointly and severally, being the purchase price and the survey fees concerning the plot the 3rd and 4th Defendants purportedly and fraudulently pretended to sell to the 1st Defendant.***
6. ***Interest at Court rates is awarded to the 1st Defendant against the 3rd and 4th Defendants, jointly and severally, from the date the 1st Defendant filed her Counter-Claim until payment in full.***
7. ***Costs are awarded to the 1st Defendant, for her Counter-Claim, against the 3rd and 4th Defendants, jointly and severally.***

***It is so ordered.***

***DELIVERED IN OPEN COURT AT MERU THIS 23RD DAY OF MAY, 2016 IN THE PRESENCE OF:***

***CC: Lilian/Daniel***

***Nyagah for the Plaintiff***

***P.M. NJOROGE***

***JUDGE***