



Nandwa & another (Suing on Their Own and on Behalf of Single Mothers Association of Kenya) v Nairobi County Government & another (Environment & Land Case 958 of 2014) [2025] KEELC 3393 (KLR) (29 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3393 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 958 OF 2014**

AY KOROSS, J

APRIL 29, 2025

BETWEEN

ANGELINE OKWEYA NANDWA 1ST PLAINTIFF

JANE ARIMI 2ND PLAINTIFF

**SUING ON THEIR OWN AND ON BEHALF OF SINGLE MOTHERS
ASSOCIATION OF KENYA**

AND

NAIROBI COUNTY GOVERNMENT 1ST DEFENDANT

NAIROBI METROPOLITAN SERVICES 2ND DEFENDANT

JUDGMENT

1. The dispute between the parties revolves around a parcel of land known as Plot No. CP & Arch/002619 (“suit property”) measuring approximately 0.20ha, which was allotted to the plaintiff on 29/04/1997 by the Nairobi City Council (“Council”). The council was the 1st defendant’s predecessor.
2. The 2nd defendant took over some of the functions of the 1st defendant but became defunct in the course of these proceedings.
3. Before such formal allocation of the suit property to the plaintiff, the Nairobi City Commission (“NCC”) whose function was taken over by the council had sometimes on 11/6/1992, issued a temporary occupation license to the plaintiff (“TOL”) allowing it to occupy some land which they paid a monthly rent of kshs. 300/-.
4. It appears there is a relation between the land they occupied temporarily and the disputed property. Noteworthy, the size of the land they occupied temporarily was not disclosed.



5. It emerges the main bone of contention before this court is not the size of the suit property on paper but its size on the ground. Thus, this court will shortly summarise each of the parties' cases.

Plaintiff's case and evidence

6. In a further amended plaint dated 19/05/2021 filed by the law firm of Ms. Kamau Kinga & Co. Advocates, the plaintiff contended the property allocated to it was Plot No. CPX ARC ARCH 002619 ("plaintiff's land").
7. It was contended that after the TOL and issuance of the allotment letter, the relevant charges towards acquiring the plaintiff's land were paid, including stand premium, ground rent, survey and legal fees.
8. Additionally, a beacon certificate was issued to the plaintiff, and a part development plan ("PDP") was undertaken. It was asserted the plaintiff had been in occupation and possession of the suit property since 1992.
9. Nonetheless, it was discovered the defendant had interfered with the beacon certificate and PDP by reducing the suit property's size by ½.
10. It was averred that this has been the source of conflict between the parties, leading to a notice of eviction by the defendants to the plaintiff, giving it 7 days' notice to vacate the portion it had allegedly encroached upon, which size was ½ of the plaintiff's land.
11. Thus, the plaintiff was apprehensive the defendants would evict it from the suit property and sought the following reliefs: -
 - a. A permanent injunction and prohibition restraining the defendants and or their agents, servants and or whomsoever from evicting and interfering with the plaintiff's peaceful and quiet enjoyment or dealing with the plot ref no. CPX Arch/00219 being the excision of a disused parking lot at LR No.209/6738/Part Kinyanjui Street-Ziwani, Nairobi.
 - b. A declaratory order that the plaintiff is the legal and or beneficial owner of CPX Arch/00219, being the excision of a disused parking lot at LR No.209/6738/Part Kinyanjui Street-Ziwani, Nairobi.
 - c. In the alternative, the plaintiff be awarded special damages for demolition of the suit property amounting to kshs. 16, 407, 857/-
 - d. Costs of the suit.
12. The plaintiff's chairperson, Angeline Okweya Nandwa, testified as PWI and she adopted her witness statement and produced documents in support of the plaintiff's case, which were marked as Pex1-6.
13. It was her evidence that she was unsure of the particulars of the property allocated to the plaintiff. She stated the plaintiff's pleadings disclosed the particulars as CPX Architect 002619 instead of CP/ Arch/002619.
14. Further, that though it was pleaded the allotment took place on 26/04/1997, the actual date was 29/04/1997, which, according to her, was a minor infraction.
15. She maintained the suit property was 0.2ha, and the plaintiff had never been evicted from the suit property and was in occupation but later in her re-examination, she stated the plaintiff had been evicted.



16. She stated the beacon certificate dated 12/07/2012 referenced property no. CPU/Arch/002619, which indeed tallied with the reference no. contained in the allotment letter.
17. She testified there was another beacon certificate of 1997, but did not produce it before this court, and she asserted the plaintiff rejected the beacon certificate of 12/07/2012.
18. The reason advanced as to why it was rejected was that the plaintiff's land had been allocated to other persons.
19. Nevertheless, she admitted Philip Mbiti Kiswii (DW1) had visited the ground where the suit property was located, fixed the beacons, showed the plaintiff the extent of where the 0.2ha lay, and the plaintiff had paid for the beacon certificate.

Defendant's case and evidence.

20. By the defendants' then counsel, M/s. W.S. Ogola, a defence was filed dated 29/08/2014, which was mostly composed of denials and put the plaintiff to strict proof.
21. Further, it was maintained the plaintiff was allocated land measuring 0.2ha and admitted payments were made to it by the plaintiff for such allocation and that a TOL existed between the parties prior to such apportionment.
22. It was averred on the ground, the plaintiff occupied more than the 0.2ha that was allocated to it and had encroached onto the defendants' land, thus a notice to vacate ensued. Accordingly, this court was urged to dismiss the plaintiff's case.
23. DW1, an assistant director of geographic information and systems with the 1st defendant and also a surveyor adopted his witness statement and produced documents in support of the defendants' case which were marked and produced as Dex1-8.
24. He gave an uncontroverted history in the following manner of how he fixed the boundaries of the suit property and thereafter issued a beacon certificate to the plaintiff.
25. The plaintiff who had been allocated the suit property measuring 0.2ha applied for a beacon certificate and paid for it.
26. Upon instructions from the chief surveyor to survey the suit property and armed with the letter of allotment and PDP, he visited the suit property in the plaintiff's presence, beacons the suit property and issued the beacon certificate dated 12/07/2012 to it.
27. He asserted when identifying the boundaries of the suit property, it was established the plaintiff occupied a larger portion than what was allotted to it, as it had encroached onto land belonging to Commonwealth Cemetery.
28. He further testified he showed the plaintiff the extent of its land and encroachment and issued it with a demolition notice. He maintained the plaintiff had never been evicted from the encroached portion.

Parties' submissions

29. As directed by the court, all parties filed written submissions. The plaintiff's counsel filed written submissions dated 16/12/2024. However, counsel did not frame any issue for determination but made submissions on the threshold for the grant of injunctions.



30. The defendants' now law firm on record Ms. K.N. Nyamweya & Co. Advocates, filed written submissions dated 17/02/2025 and though counsel made submissions on injunctions, he also argued the plaintiff had not proved its case.
31. Upon identifying and considering the issues for determination, this court will, in its analysis and determination, consider the respective parties' arguments on the particular issue and also consider provisions of law and authorities they relied upon to advance their arguments as contained in their submissions.

Issues for determination,

32. I have considered the pleadings, evidence adduced by the parties, as well as rival submissions. Being guided by the provisions of law and judicial precedents, this court will now proceed to consider the merits or otherwise of the plaintiff's claim, and conceivably, the issues for resolution are;
 - I. Whether this plaint has been instituted by an entity capable of instituting such a suit.
 - II. Was the suit property properly described in the plaint?
 - III. What was the plaintiff's claim, and was it proved to the required standards?
 - IV. What orders should this court issue, including an order as to costs?

Analysis and Determination

33. The issues that were earlier identified as arising for determination shall be handled separately in a simultaneous manner.

I. Whether this plaint has been instituted by an entity capable of instituting such a suit.

34. In paragraph 1 of the further amended plaint, the plaintiff is described as single mothers association community based self help group.
35. Whether such a group or a few members of such a group can institute civil proceedings has been the subject of judicial interpretation in a line of decisions and this court adopts the position taken in the persuasive decision of Kipsiwo Community Self Help Group v Attorney General And 6 Others [2013] KEELC 63 (KLR) which stated thus:-

“Kipsiwo Self Help Group had no capacity to institute action in its own name. A person recognized in law had to sue on behalf of members of Kipsiwo Self Help Group and such members had to be named and identified with precision. The person bringing action has to demonstrate that he has permission to bring the action on behalf of the members of the Group, or on behalf of the people he seeks to represent, if it is a representative suit.”

36. It follows in this case that the self-help group could not sue, and further, PW1 and Jane Arimi who allegedly sued on their own behalf had to first obtain authority to file suit from the congregation of the plaintiff's members and in the absence, this court finds the suit incompetent.



I. Was the suit property properly described in the plaint?

37. As required by Order 4 Rule 3 of the Civil Procedure Rules (CPR), the plaint was required to adequately describe the suit property to enable the court and defendants to adequately identify it. This provision of law states as follows: -

“Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it.”

38. The plaint has described the property in contention as Plot No. CPX ARC ARCH 002619, yet it never provided any documents to substantiate the existence of such a property.

39. From documentary evidence, it is obvious the plaintiff misstated the suit property instead of describing it as Plot No. CP & Arch/002619.

40. Given the provision of Order 4 Rule 3 of the CPR, there should never have been any ambiguity in the suit property that is the subject matter of the dispute. Consequently, for reasons of inadequate description of the suit property, this court finds the plaintiff's claim fails.

II. What was the plaintiff's claim, and was it proved to the required standards?

41. When one pleads illegality or fraud, Order 2 Rule 10 (1) (a) of the CPR provides that such claims have to be particularised, and this proviso states:

“(1) Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing—

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and”

42. It is settled law that fraud must procedurally be specifically pleaded and proved on parameters beyond a balance of probability but below that of beyond a reasonable doubt.

43. This principle of law was well elucidated in the case of Vijay Morjaria v Nansingh Madhusingh Darbar & Hulashiba Nansingh Darbar (Civil Appeal 106 of 2000) [2000] KECA 223 (KLR) (Civ) (1 December 2000) (Judgment) where the Court of Appeal held: -

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” Emphasis added

44. It is an equitable legal maxim that no person will suffer a wrong without a remedy. Moreover, remedies prevent wrongs and preserve rights.

45. Hence, it was incumbent upon the plaintiff to adequately identify, plead and particularise its claim to the required standards.

46. This court has gone through the further amended plaint, and though the reliefs sought are clear and fraud and particulars thereof have been pleaded, the word fraud was not specially used in the plaint.



47. When considering the non-use of the word fraud in a claim, the Court of Appeal decision of Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] KECA 816 (KLR) cited with approval the passage of Bullen & Leake & Jacobs, Precedent of pleadings 13th Edition at page 427 in the following words:-

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged (Wallingford v Mutual Society (1880) 5 App. Cas.685 at 697, 701, 709, Garden Neptune V Occident [1989] 1 Lloyd’s Rep. 305, 308). Emphasis added.

48. It follows that even though the plaintiff did not use the word “fraud” in its pleadings, this did not necessarily defeat its claim.

49. As pleaded, the particulars of the said fraud were that in 2013, it discovered the defendants had furtively subdivided the plaintiff’s land, which had been allocated to it in 1992 and that the PDP and beacon certificate had been tampered with the intention of reducing the plaintiff’s land by ½.

50. As earlier stated in the analysis of the other issues, the plaintiff’s claim was bound to fail, but even assuming for a moment that a proper description of the suit property was made and it could sue, its claim of fraud was destined to flop.

51. This is so because fraud is a matter of evidence, yet the plaintiff did not present any iota of evidence to substantiate its allegations of fraud.

52. It was expected to present evidence of the existence of the 1992 allotment, but that was not so. Suffice it to say, the only existing allotment letter of the suit property was the one issued on 29/04/1997.

53. Furthermore, no evidence was ever presented regarding the allegations of tampering with the PDP or beacon certificate; the only existing beacon certificate is that of 12/07/2012, produced by DW1.

54. In this court’s opinion, the plaintiff’s claim was speculative on the exact size it is supposed to occupy. It appears it was of the belief that it was entitled to the land it occupied under TOL and not under the letter of allotment.

55. Nay, the terms of the TOL came to an end and upon issuance of the letter of allotment, it was only entitled to occupancy of the suit property, which measures 0.2ha, whose boundaries were pointed out to them by DW1. Hence, this court finds the plaintiff did not prove its claim to the required standards.

II. What orders should this court issue, including an order as to costs?

56. It is this court’s ultimate finding that the plaintiff did not prove its case to the required standards. It is trite law costs follow the event and although the plaintiff could not sue, the defendant’s costs shall personally be borne by PW1 and Jane Arimi.

56. In the end, this court hereby issues the following disposal orders: -

- a. The plaintiff’s suit against the defendants is hereby dismissed.
- b. The defendants’ costs shall be borne by Angeline Okweya Nandwa and Jane Arimi.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 29TH DAY OF APRIL, 2025.



HON. A. Y. KOROSS

JUDGE

29.04.2025

**JUDGMENT DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM**

In the presence of;

Ms Kanja- Court Assistant

N/A for the parties

