



**Minju v Nairobi County Government & 2 others (Environment & Land Case 381 of 2018) [2022] KEELC 14 (KLR) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEELC 14 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 381 OF 2018  
EK WABWOTO, J  
APRIL 28, 2022**

**BETWEEN**

**ELVIS MAINA MINJU ..... PLAINTIFF**

**AND**

**NAIROBI COUNTY GOVERNMENT ..... 1<sup>ST</sup> DEFENDANT**

**MINISTRY OF LANDS ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. By an Originating Summons dated 4<sup>th</sup> September 2018, the Plaintiff prayed for the following orders: -
  2. That this Honorable Court be pleased to issue and grant an order vesting land parcel number Land Reference Number 3.302 Mathare North Estate registered in the name of Josephat Nyota Muchiri To Elvis Maina Minju, the Plaintiff herein.
  3. That this Honourable Court do issue an order requiring the District Land Registrar Nairobi to have the land parcel number Land Reference Number 3.302 Mathare North Estate registered in the name of Elvis Maina Minju.
  4. That the registrar of titles do dispense with production of the original titles.
  5. That the cost of this application be provided for.
2. The originating summons was supported by an affidavit sworn by the plaintiff and premised on the grounds that: -
  - i. The Plaintiff acquired rights over property Land Reference Number 3.302 Mathare North Estate through purchase of the same from Mary Wanjiru Ngugi an assignee of the property by



the Nairobi County Council as evidenced by an Assignment made on the 23<sup>rd</sup> day of December 2008 herein attached.

- ii. The County Council of Nairobi has failed to prove a title of Land Reference Number 3.302 Mathare North Estate to the Plaintiff despite numerous correspondences to them on the same.
3. The Originating summons was opposed by the Defendants. The first Defendant filed grounds of opposition dated 14<sup>th</sup> June 2019. The gist of the said grounds of opposition was that the Plaintiff had not adduced any evidence to prove ownership of the alleged parcel of land and consequently the Plaintiff has no cause of action.
4. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendant equally filed grounds of opposition dated 25<sup>th</sup> September 2018 in response to the originating summons. They pointed out that the originating summons application was frivolous, vexatious, misconceived and an abuse of the court process since the Plaintiff had not enjoined the alleged registered owner one Josephat Nyota Muchiri as a party to this suit and equally that the Plaintiff had not attached any documentary evidence to prove that he followed the right procedure in acquiring the title to the suit property from the alleged assignee.
5. Pursuant to directions issued on 23/6/2021, the court directed the originating motion to be heard on 19<sup>th</sup> October 2021 by way of viva voce evidence. However, hearing did not take off on the said date as scheduled but later proceeded on 15<sup>th</sup> February 2022. During the hearing of the suit, Elvis Maina Minju testified as PW1 and was the sole Plaintiff's witness while none of the Defendants called any witness to testify on their behalf.
6. During the testimony of PW1, he adopted his witness statement dated 14<sup>th</sup> August 2020.
7. The Plaintiff's case was based on the originating summons dated 4<sup>th</sup> September 2018. The contents of the originating summons together with the affidavit sworn in support was also similar in his witness statement.
8. He stated that he bought the Plot No. 3.302 Mathare North from Mary Wanjiru Ngugi on or about 5<sup>th</sup> May 2012 upon paying Kshs. 400,000/= as purchase price. It was his testimony that his efforts in registering the plot in his name have been resisted by the County Government of Nairobi in spite of presenting all the necessary documents.
9. The Plaintiff further testified that he has continued to pay rates and rent for the plot as and when they fall due to the relevant authorities using the name of Nyota Muchiri and that the said Nyota Muchiri has neither been in occupation of the plot nor laid any claim to the same for a period of over 12 years.
10. Upon cross-examination by counsel for the 1<sup>st</sup> Defendant, he stated that the sale agreement did not indicate whether he was the registered owner and neither has he ever presented any transfer forms. He also conceded that the property did not have a title.
11. On cross-examination by counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant, he stated that did not sue the original allottee because he had no claim against the person and all he wanted in the current suit is for orders seeking to have the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent register him as the owner of the suit property.
12. The Plaintiff filed his written submissions dated 28<sup>th</sup> February 2022 through M/s Muigai Kemei Advocates. Counsel submitted that the Plaintiff was forced to file the current application owing to the challenges that he had encountered while trying to register his interest to the suit property.
13. It was submitted that the Plaintiff has proved his case before court and was entitled to the orders sought. Reference was made to the case of ELC No. 295 of 2015 Janet Mwendwa v Mavutha Musyaka, where Yano J. found that a vesting order issued by a magistrate court according title to a party was properly in



place. The court was requested to once again grant the prayers sought since there were no competing interest in respect to the said property.

14. The 1<sup>st</sup> Defendant filed their submissions dated 14<sup>th</sup> March 2022 through the firm of Irungu Kang'ata & Co. Advocates, while the 2<sup>nd</sup> and 3<sup>rd</sup> never filed. Counsel or 1<sup>st</sup> Defendant outlined four wishes for determination by the court.
  - a) Whether there was transfer of interests in the suit parcel vide a deed of assignment from Joseph Nyota Muchiri to Racheal Oluoch Ogiro.
  - b) Whether the subsequent transfers by way of sale agreement are valid and justified as to transfer forms in the circumstances.
  - c) Who is the rightful party to execute the transfer forms in the circumstances?
  - d) Whether the Chief Land Registrar should dispense with production of titles in registration of new interests.
15. On whether there was transfer of interests in the suit parcel vide a deed of assignment from Joseph Nyota Muchiri to Rafael Oluoch, Counsel submitted that upon perusal of the Land Register, it was evident that the transfer never happened since the land was still registered in the names of Josephat Nyota Muchiri. Counsel referred to Section 36 of the *Land Registration Act, 2012* which requires all dispositions and dealings affecting land be undertaken in accordance with the provision of the said Act. It was argued that the deed of assignment had not been registered and hence the same could not have been decreed to have transferred any interests in the land.
16. On whether the subsequent transfers by way of sale agreements are valid and justified as to transfer interests on the suit land to the Plaintiff, counsel argued that the transaction relied upon by the Plaintiff was fatally defective since it sought to transfer freehold interests which could not be held with respect to public land and that it also attempted to transfer interest to a person who had none.
17. On the issue of who was the rightful party to execute the transfer forms in the circumstances, counsel submitted that Josephat Nyota Muchiri is the only person with interests capable of being transferred.
18. On their final issue on whether the Chief Land Registrar should dispense with production of titles in registration of new interests, counsel submitted that the plaintiff had failed to provide documents necessary for registration and hence they could not bypass the stipulated process. Counsel concluded the submissions by urging the court to dismiss the Plaintiff's suit with costs.

### **Analysis of Issues and determination**

19. I have considered the parties' pleadings, evidence and submissions, and in my view, the following key issues fall for determination by the court;
  - i. Whether the Plaintiff has proved his case to the required standard.
  - ii. Whether the Plaintiff is entitled to the prayers sought.
  - iii. What orders should issue as to costs. I will proceed to analyze the said issue sequential as they are listed in this judgment.

### **Issue No. 1**

Whether the Plaintiff has proved his case to the required standards.



20. Counsel for the Plaintiff submitted that the Plaintiff land had been allocated to Nyota Muchiri as is still indicated by the records held by the County Government of Nairobi, the 1<sup>st</sup> Defendant herein.
21. Having heard from the Plaintiff testimony, it is not disputed that indeed the land was originally owned by Nyota Muchiri even though its subsequent transfer to Rafael Oluoch, Mary Muchiri and later the Plaintiff is what is disputed by the Defendants since the deed of assignment was not registered and neither were there any transfer forms that were executed by him that was presented to court as evidence.
22. To counter the Plaintiff's narrative, the 1<sup>st</sup> Defendant in their submissions outlined and detailed how the correct process was not followed.
23. From the evidence adduced, it was clearly demonstrated that the transfer of the property to the Plaintiff was not done in accordance with the applicable provisions of the law. There was also no evidence confirming the registration of the deed of assignment and neither was the court furnished with any copies of the transfer forms in respect to the said property. In the case of *Rajendra Sanghani & another (Both Suing in their Capacities as Administrators of the Estate of Ratilal Gordhandas Sanghani) v Fairmile Investments Limited & another* [2021] eKLR the Court held that: -

“I am in agreement with the 1<sup>st</sup> Defendant that the said assignment did not convey proprietorship interests in the suit property to the deceased since it was not registered”.
24. Being guided by the above authority and as it was in the instant case, it is evident that an unregistered deed of assignment cannot be decreed to have conveyed any proprietorship interest in the suit property.
25. In view of the foregoing circumstances, it is the finding of this court that the plaintiff case has not been proved to the required standard.

#### **Issue No.2**

##### **Whether the Plaintiff is entitled to the prayers sought.**

26. The Plaintiff sought for several reliefs as was stipulated in his originating summons. However, having found that the Plaintiff's case has not been proven to the required standard, I am afraid that the reliefs sought cannot be granted. Additionally, court orders cannot be issued in vain.

#### **Issue No. 3**

##### **What orders should issue as to costs.**

28. On the issue of costs, Section 27 of the *Civil Procedure Act* gives the Court the discretion to grant costs. Ordinarily, costs usually follow the event, unless otherwise directed by the court. Being guided by the decision in *Samuel Kamau Macharia and another –vs- Kenya Commercial Bank and two others* [2012] eKLR on costs and the character of the suit, I will direct that each party shall bear their own costs of the suit.
29. In conclusion, I find that the Plaintiff has not discharged his burden of prove in the suit. All he has done is to make general statements that the suit property had been assigned to him. Consequently, the suit is dismissed with no orders as to costs.

**It is so ordered.**

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28 TH DAY OF APRIL 2022**

**E. K. WABWOTO**



**JUDGE**

In the Virtual Presence of:-

Ms. Joan Njomo for the Plaintiff.

Ms. Kosgei for the 1<sup>st</sup> Defendant.

N/A for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

Court Assistant: Caroline Nafuna.

**E. K. WABWOTO**

**JUDGE**

