



**Mugo v Kabue (Environment & Land Case 387 of 2017)
[2022] KEELC 41 (KLR) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEELC 41 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 387 OF 2017**

OA ANGOTE, J

APRIL 28, 2022

BETWEEN

RAHAB NJERI MUGO PLAINTIFF

AND

WILLIAM WARUTERE KABUE DEFENDANT

JUDGMENT

Introduction

1. In the Plaintiff dated June 9, 2017, the Plaintiff averred that she is the legal and beneficial owner of land known as L. R. No. 21190/111/189 situated in Tassia Estate, Nairobi (the suit property); that the said land was originally owned by the National Social Security Fund (NSSF) and that she is entitled to the exclusive possession of the same.
2. According to the Plaintiff, on or about February, 2016, the Defendant trespassed on the suit property and erected a fence around it; that the Defendant also erected temporary structures on the suit property and that the Defendant's actions are illegal and unjustified.
3. The Plaintiff averred in the Plaintiff that he is entitled to an order of permanent injunction restraining the Defendant from trespassing on the suit property and for removal of the fence erected around it.
4. The Defendant filed a Defence and counter-claim in which he averred that he purchased the suit property through Kwa Ndege Self Help Group in the year 2002; that he made an initial payment of Kshs 4,700 on December 12, 2002 to Kwa Ndege Self Help Group and that subsequently, the NSSF approached the members of Kwa Ndege Self Help Group and informed them that it owned the land that the Kwa Ndege Self Help Group was interested in.
5. It was averred in the defence that the NSSF informed the members of Kwa Ndege Self Help Group to apply for land by paying Kshs.500; that the purchase price was to be deposited in an account that



was to be provided for the land and that he applied for the land and paid the requisite deposit of Kshs 500 to NSSF.

6. The Defendant averred in the Defence that he made further payments of Kshs 45,000 to NSSF on April 10, 2007; that having sold to him the suit property in the year 2002, NSSF could not legally sell the same land to the Plaintiff and that the Plaintiff's recourse is to pursue legal proceedings against the NSSF and not him.
7. In the counter-claim, the Defendant averred that he is the lawful owner of land known as Nairobi/Block 21190/111/189 situated in Tassia, Nairobi and for a permanent injunction restraining the Plaintiff from encroaching on the suit property.

The Plaintiff's case

8. The Plaintiff, PW1, informed the court that she bought land known as Nairobi/Block 21190/11/189 situated in Tassia Nairobi (the suit property) from the National Social Security Fund and that she paid the purchase price by instalments.
9. According to PW1, she paid the purchase price in instalments until the year 2010, that in the year 2014; she received a letter from the NSSF informing her to make payments for the infrastructure and that she later received another letter telling her that the land she had paid for was outside the NSSF land.
10. It was the evidence of PW1 that the NSSF promised to give her another alternative piece of land and that when the new plot was allocated to her, she continued paying the requisite monies for the infrastructure.
11. It was the evidence of PW1, that the total payable amount for the road infrastructure was Kshs 900,000; that she paid Kshs 466,000 for the road but stopped making the payments when the Defendant started claiming the same land and that the NSSF gave her a letter confirming the issue of ownership, which letter she took to the area Chief.
12. In cross-examination, PW1 stated that she bought the initial plot from Wairimu; that she lost the initial plot and was given the suit plot by the NSSF as an alternative plot and that in the year 2016 she found the Defendant had fenced the suit property.

The Defence case

13. The Defendant, DW1, informed the court that he was allocated plot number 189; that he was a member of Kwa Ndege Self Help Group and that he has owned the suit property since the year 2002.
14. According to DW1, he was allocated the suit property as a member of the Self Help Group; that he paid Kshs 4,700 for plot number 189 and that the NSSF informed him later that the land did not belong to Kwa Ndege Self Help Group but to itself.
15. It was the evidence of DW1 that they were told to apply for the same plots to NSSF; that he applied for the plot and paid a deposit of Kshs.500 on 26th April, 2006 and Kshs 45,000 to the NSSF.
16. In addition to the Kshs 500 and Kshs 45,000 that he paid, DW1 informed the court that he made further payments to NSSF for the suit land; that he has paid a total of Kshs 550,000 for the land and that he has been living on the land since the year 2013. In cross-examination, DW1 stated that he applied for the land in the year 2006 and was given an account number by NSSF where he used to deposit the purchase price.



Submissions

17. The Plaintiff's advocate submitted that the Plaintiff did acquire the suit property and paid the full purchase price; that the NSSF has acknowledged the fact that the suit property is owned by the Plaintiff and that in contrast, the exhibits produced by the Defendant show that he made payments for the suit property to an entity that did not own the land.
18. The Defendant's counsel submitted that the Plaintiff has failed to pursue legal proceedings against the NSSF which double allocated the suit property and that by the time the Plaintiff was being re-allocated the suit land, the same had already been allocated to the Defendant. Reliance was placed on the case of *Richard Kipkemei Limo v Hassan Kipkemboi Ngeny & 4 others* [2019] eKLR where the court held that the effect of an irregular allotment of land is distinct from a situation of double allocation.
19. It was submitted that the Plaintiff has violated the doctrine of legitimate expectation; that the Defendant had a legitimate expectation of enjoying exclusive proprietary rights over the suit property and that the Defendant's right to property is protected under Article 40 of *the Constitution*.

Analysis and Findings

20. Both the Plaintiff and Defendant are claiming to be the owners of land known as L. R. No. Nairobi/Block 21190/111/189 situated in Tassia Estate, Nairobi, having purchased it from the National Social Security Fund (NSSF).
21. The evidence by the Plaintiff is that initially, she purchased land known as L. R. No. 97/2133/029 from the NSSF. However, after paying the purchase price of Kshs 327,000, she was informed by the NSSF that the said land was not owned by NSSF.
22. It is the Plaintiff's case that on October 8, 2015, the NSSF informed her that she had been re-located from L. R. No. 97/2133/029 to L. R. Nairobi/Block 21190/111/189 (the suit property). It is the Plaintiff's case that he has paid a total of Kshs 466,000 in respect of fees to the NSSF.
23. The Plaintiff produced in evidence an agreement that she entered into with Wairimu for the purchase of plot number 29 in Tassia Estate, also known as L. R. 97/2133/029. According to the said agreement, the seller was to "facilitate the buyer to change documents at NSSF by furnishing the buyer with the required documents."
24. The Plaintiff also produced in evidence a letter dated 8th October, 2007 purportedly authored by Lucy Wairimu Muiruri addressed to the Managing Trustee, NSSF. In the said letter, Lucy Wairimu informed the NSSF that she had sold L. R. 97/2133/029 to the Plaintiff and sought to be allowed to transfer her rights and obligations to the Plaintiff.
25. The Plaintiff further produced in evidence a letter dated 1st October, 2014 by the NSSF in which it informed the Plaintiff as follows;

"This is to confirm that L. R. No. 97/2133/029 falls outside the planned area of NSSF land. However, since you have paid the full purchase price of the plot, we shall look for alternative plot to give you."
26. It would appear that on 8th October, 2015, the NSSF "re-located" the Plaintiff from L. R. No. 97/2133/029 to L. R. No. 21190/111/189. According to the letter by the NSSF, the account number for the suit property was indicated as 5008970. In the said letter, the Plaintiff was advised by the NSSF to pay Kshs 908,000 for infrastructure development fee in respect of the plot.



27. The Plaintiff produced in evidence another letter dated January 17, 2017 by the NSSF. In the said letter, the NSSF informed the Chief of Embakasi location that it had sold to the Plaintiff the suit property having been paid the full purchase price to them.
28. In evidence are the receipts that were issued by the NSSF being payment for the land. The first payment that Lucy Muiruri made to the NSSF for Kshs 500 is dated June 9, 2006. The said Lucy Muiruri made further payments of Kshs 45,000 on October 8, 2007, with the rest of the payments being made to NSSF by the Plaintiff between May 25, 2009 and 23rd January, 2010.
29. The Plaintiff also produced in evidence the “Tenant Purchase Scheme – Transaction Report” showing the payment of Kshs 327,000 by the Plaintiff to NSSF between 2007 – 2010.
30. On the other hand, the Defendant’s case is that he purchased L. R. No. Nairobi/Block 21190/111/189 (the suit property) through Kwa Ndege Self Group sometimes in the year 2002; that he made the initial payment of Kshs 4,700 on December 12, 2002 to Kwa Ndege Self Help Group and that subsequently, they were informed that the land belongs to NSSF.
31. According to the Defendant, on April 26, 2006, he applied for the same land to NSSF and paid Kshs. 500; that he was issued with an account number by NSSF to enable him make payments for the suit property and that he made further payments of Kshs 45,000 to NSSF on April 10, 2007. The document produced by the Defendant shows that he paid Kshs 500 to NSSF on April 26, 2006 and a further payment of Kshs 45,000 and Kshs 10,000 on April 10, 2007 and January 13, 2014 respectively.
32. Although the Defendant was offered the suit property in 2006 by NSSF, the evidence before this court shows that he has never paid the full purchase price. Indeed, unlike the documents produced by the Plaintiff, the Defendant has not adduced any evidence to show that NSSF acknowledged that he had fully paid up the purchase price.
33. Considering that both parties are in agreement that the suit property initially belonged to NSSF, and in view of the evidence to show that the Plaintiff has paid not only the full purchase price of the land, but also paid for infrastructural development, and the NSSF having confirmed in writing that she is the owner of the land, it is the finding of this Court that the Plaintiff has proved her case on a balance of probabilities.
34. Indeed, the Defendant cannot claim to be the legitimate owner of the suit property considering that he did not pay the full purchase price. That explains why the same land was offered to the Plaintiff in the year 2014 as an alternative plot to the one he had purchased in 2010. In the circumstances, the only recourse that the Defendant has is to file a suit for recovery of the deposit paid to NSSF. However, he is not entitled to the suit property for having failed to meet his side of the bargain.
35. For those reasons, the Plaintiff’s suit is allowed as follows:
 - a. A declaration be and is hereby issued that the Plaintiff is the beneficial owner of land known as L. R. No. Nairobi/Block 21190/111/189.
 - b. A declaration be and is hereby issued that the Defendant has trespassed on L. R. No. Nairobi/Block 21190/111/189.
 - c. A permanent injunction be and is hereby issued restraining the Defendant by himself, servants, agents and or any other person(s) purporting to derive right or entry from the Defendant from trespassing, selling, alienating and or in any other way whatsoever interfering with the Plaintiff’s possession, occupation and/or quiet enjoyment of L. R. No. Nairobi/Block 21190/111/189.



- d. The Defendant to demolish the fence and temporary structures erected on L. R. No. Nairobi/Block 21190/111/189 within 60 days, and if not the Plaintiff to demolish the same at the Defendant's costs.
- e. The Defendant to pay the costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 28TH DAY OF APRIL, 2022

O.A. ANGOTE

JUDGE

In the presence of;

No appearance for the Plaintiff

Mr. Mukungo for the Defendant

Court Assistant: John Okumu

