



REPUBLIC OF KENYA



KENYA LAW

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**Deceased & another (Suing as the legal representative of the Estate of
NJENGA WANYOIKE deceased) v Karani & another (Environment & Land
Case 38 of 2011) [2022] KEELC 11 (KLR) (27 April 2022) (Judgment)**

Neutral citation: [2022] KEELC 11 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 38 OF 2011

LN MBUGUA, J

APRIL 27, 2022

BETWEEN

NJENGA WANYOIKE DECEASED 1ST PLAINTIFF

NJENGA WANYOIKE DECEASED 2ND PLAINTIFF

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF NJENGA
WANYOIKE DECEASED**

AND

ANNAH FRIDAH KARANI 1ST DEFENDANT

EMBAKASI RANCHING CO. LTD 2ND DEFENDANT

JUDGMENT

1. This suit was instituted by the late Njenga Wanyoike through a plaint dated 2.2.2011, amended on 22.10.2018, The orders sought therein are a permanent injunction restraining the 1st Defendant from any dealings with the plots Nos. A350 and A351 hived from land parcel LR No. 10904/2 Ruai, a declaration that Njenga Wanyoike (deceased) was the legal owner of the aforementioned plots, an order that the Defendant do demolish all the structures erected on the said plots, eviction be issued against the 1st Defendant, and General damages for trespass against the 1st Defendant.
2. The 1st Defendant in the amended defence and Counterclaim dated 25.2.2014 denied the claim of the plaintiff contending that she owns the plots V7698 and V7699 and these are the properties she had taken possession and commenced construction of. In her counter claim, she prays for judgment against the plaintiff for Ksh. 55,000/-, cost of the suit and interest. The counter claim was denied by the plaintiff.



3. The 2nd Defendant in their defence statement dated 20.10.2018 denied all claims made by the Plaintiffs and prayed for the dismissal of the suit.
4. The initial plaintiff apparently died on 4.9.2017, but was substituted with the current plaintiffs on 9.10.2018. The deceased had by then given his testimony on 18.12.2014.
5. PW1, the late Njenga Wanyoike testified that he bought the suit land from the 2nd Defendant in 1978 where he was allocated plots A350 and A351 and given allotment letters. He stated that on 9th June 2009 he was given a beacon certificate for the two plots, he was shown the plots and the beacons. He then paid Kshs. 12,000 as bonus and was given receipts for 350B and 351B pointing out that one could not pay bonus without owning a plot. He clarified that when he was first shown the plots of land they did not have beacons but the beacons were fixed when he paid Kshs. 2,000. He paid a further Kshs. 5,000 for the bonus plots but did not get a beacon certificate for the bonus plots because there were other people on the same land.
6. He reported the matter to the Embakasi Ranching Co. Ltd Chairman that there was someone putting up constructions on his land, he was given a letter dated 9th June 2009 confirming that the said land was his. However, the 1st Defendant went on with the construction. In support of his case, Pw1 produced 11 exhibits.
7. On cross examination PW1 stated that he did not have title to the suit property, but has a share certificate. He doesn't know the 2nd Defendant's Chairman and had not carried the letter of complaint to the 2nd Defendant .
8. He stated that he paid survey fees of which, the survey was undertaken by the 2nd Defendant's surveyor, but he does not have a survey map . He also stated that he was not given allotment letters or share certificates for the bonus plots and cannot remember when the said bonus plots were issued to him.
9. He denied burning the 1st Defendant's property and being summoned at the Ruai Police Station. He is aware that 1st Defendant had put up a house on the suit property despite being asked not to by the Plaintiff. No further evidence was tendered for the Plaintiff
10. The 1st Defendant Annah Fridah Karani adopted her witness statement dated 10th November 2011 as her evidence and also produced the documents in her list dated 3.3.2014 as her exhibits 1-7 respectively. Her case is that she purchased two plots V7698 and V7699 from 2nd defendant's parcel LR No. 10904/2 on 6th August 2008 and was given ownership certificate number NMC 013070 and NMC 013071. The land was vacant. She was issued with receipts and a 'Pink Card' which is the document given before a title is issued. She was also given a beacon certificate and a member certificate. She erected a barbed wire fence along the perimeter of the said plots and proceeded to put up a two storey house where she resides.
11. DW1 states that she was shown the actual plots on the ground and tentative beacons. That in year 2010, she paid for survey fees and one Mr. Nyika carried out beacon certification and was issued certificate number 9083 dated 2nd February 2010. When dw1 was about to finish constructing her residential house, the late Njenga together with his son set her perimeter fence on fire occasioning damage and the matter was reported at Ruai Police Station. The matter was referred to the 2nd Defendant and she was assured that her property stood on plots V7698 and V7699 and not A350 and A351 as claimed by the Plaintiffs.

Determination



12. This court has considered the rival claims of the plaintiffs and the 1st defendant as well as the submissions filed thereof. The question for determination is; Whether the Plaintiff is entitled to plots A350 and A351 as prayed or whether the 1st Defendant is entitled to damages sought in the counterclaim. The 1st defendant has also raised an issue in their submissions that the suit of the plaintiff has abated. However, that question is answered via the proceedings of 9.10.2018 where the court allowed both the revival of the suit and substitution of the Plaintiff.
13. On the claim of the plaintiffs, I have perused the documents adduced by the late Njenga and I note that there was a provisional letter of allocation of plots A350 and A351 bearing the 2nd Defendant's letterhead addressed to the late Njenga Wanyoike marked as Plaintiff Exhibit 2. The date thereof is not clear. The 1st Defendant too has a plot ownership certificates marked as Defendant's Exhibit 1 and 2 for plot number V7698 and V7699 respectively dated 6th August 2008. Each claimant avers that they were given beacon certificates even though PW1 was not given such a certificate for the bonus plots.
14. This court wishes to point out that the evidence submitted by parties was extremely scanty and left more questions than answers in coming up with a determination. It is rather unfortunate that the Court gave an order on 1st October 2018 directing the Assistant County Commissioner and Embakasi Ranching Co. Ltd in the company of the Government surveyor and/or surveyor retained by the Company to verify the locations of the parties respective plots on the ground and submit a report to the court incorporating a map of the said land, but this was not done. I find that no tangible evidence has been adduced by the plaintiff to indicate that plots A350 and A351 are the same plots as V7698 and V7699 and that they are the same plots on the ground. The 1st Defendant too has not proved or disproved that the said plots are different on the ground.
15. However, I do take note that Plaintiff claims to have bought the land in 1978, but has not stated the steps he took to assume possession thereof until the time he noticed that 1st defendant was building on the property in year 2010. I therefore pose this question: For a period of 30 plus years, what action did the Plaintiff undertake on the land to assert his ownership thereof?. DW1, has given a more plausible account that after she bought the property, she fenced it and started constructing. That however does not confirm that she was building on the right plot.
16. In *Danson Kimani Gacina & another v Embakasi Ranching Company Ltd* [2014] eKLR, the late Onguto J stated that:

“The law on unregistered land, unlike on registered land, is slightly unclear. Proof of ownership in the case of the former is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered then the holder of the documents is entitled to the protection of the law. There is no doubt that such proof will be on a balance of probabilities but the court must be left in no doubt that the holder of the documents proved is the one entitled to the property...”
17. As clearly espoused under Section 107 of the *Evidence Act*, he who alleges must prove. This court is not convinced that any of the parties have proved their case on a balance of probabilities to warrant any of the prayers sought in the plaint or the counterclaim.
18. The sum effect is thus, this suit and the resultant counterclaim are hereby dismissed. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF APRIL, 2022 THROUGH MICROSOFT TEAMS.



LUCY N. MBUGUA

JUDGE

In the presence of:-

Onyango for the Plaintiff

Mokua for the 1st Defendant

Gachichi for the 2nd Defendant

Court Assistant: Eddel

