



REPUBLIC OF KENYA



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**Gichura v Embakasi Ranching Company Ltd (Environment & Land Case
1328 of 2006) [2022] KEELC 62 (KLR) (27 April 2022) (Judgment)**

Neutral citation: [2022] KEELC 62 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1328 OF 2006**

**LN MBUGUA, J
APRIL 27, 2022**

BETWEEN

ALICE WANJA GICHURA PLAINTIFF

AND

EMBAKASI RANCHING COMPANY LTD DEFENDANT

JUDGMENT

1. This suit was commenced through a plaint dated August 23, 2006 where the following orders were sought against the defendants:
 - a) A declaration that the Plaintiff is entitled to ten (10) plots.
 - b) An order directing the Defendant to allocate the Plaintiff her 10 plots and place beacons thereto.
 - c) Special damages in the sum of Kshs. 80,000/- only.
 - d) Costs of this suit.
 - e) Interest on (i), (ii) and (iii) above.
2. The Plaintiff claims that she is a shareholder of the Defendant, which is a land buying company and was entitled to allocation of eight plots of land equivalent to the number of shares and bonus shares she held. She stated that she subsequently purchased additional shares and was entitled to two more plots thus making a total of ten plots. She paid all the requisite fees for the plots, but she was never given the physical plots because the plots allocated to her were unavailable either because they were public utility plots or had been allocated to other people. She added that on three occasions, she fenced plots which belonged to third parties and incurred losses of Kshs. 173, 600.



3. She also stated that she paid the Defendant Kshs. 80,000 through its surveyor as survey fees. She has lost mesne profits of Kshs. 100,000 per annum since the year 1993 to the day that the Defendant hands over possession.
4. The Defendant in its statement of defence dated February 1, 2007 denied the Plaintiff's claims, only admitting that they were a land buying company, that there was no other suit between the parties and admitted Court's jurisdiction. The renunciation notwithstanding, the Defendant on paragraph 9 of their defence stated that the Defendant... "has always been ready and willing to allocate the plaintiff with plots equivalent to her shares but the plaintiff has on several occasions declined to accept the available plots stating that they were not suitable for her..."
5. When the matter came up for hearing on February 14, 2022, counsel for the Defendant sought for adjournment on grounds of a pending application dated August 9, 2021. The application was opposed by the Plaintiff on grounds it was made in bad faith; the said application had never been served to them; and when the hearing notice was served to the Defendant on December 14, 2021, it was neither received under protest nor did the advocates for the defendant inform the Plaintiff of their intention to cease acting. Counsel for the plaintiff also added that the application was meant to derail the suit which was filed in 2006.
6. The court in disallowing the application for adjournment noted
that no plausible explanation was advanced by the defence counsel as to why an application they had filed almost half a year ago had been left in limbo without seeking directions for its prosecution. Further, the court noted that counsel for the Defendant had not protested receipt of the hearing notice served upon them on December 14, 2021. The court also took cognizance that the case was very old, having been filed in year 2006, hence the right to legal representation must be balanced with the right to a speedy trial. After, the delivery of the ruling touching on application for adjournment, the counsel for the Defendant left the court room and the hearing proceeded ex parte.

Plaintiff's Evidence

7. The plaintiff PW1, introduced herself as Alice Wanja Gichura an advocate practicing under Wanja Wambugu & Co. Advocates. She adopted her witness statement dated February 7, 2012 as her evidence and she produced the 13 documents in her list dated February 7, 2012 as exhibits 1-13.
8. She stated that she is a shareholder of the Defendant, having been issued with share certificates in 1993. That the Defendant had failed to allocate her land equivalent to the ten plots entitled to her despite having paid survey and verification fees. She stated that on different occasions the Defendant gave her plots of land that had been allocated to other people and as such prayed to get the land she was entitled to as well as special damages. The particulars of her plots are set out in paragraph 6 of her witness statement.
9. No Submissions were filed within 14 days after the close of the hearing as directed by the court on March 5, 2022.

Analysis and Determination

10. I have considered the pleadings and the evidence tendered herein. The issues arising for determination are;
 - i. Whether the plaintiff is entitled to ten plots of land from the Defendant.



- ii. Whether the plaintiff is entitled to special damages of Kshs. 80,000, interest thereon as well as mesne profits.

11. I find that Plaintiff's Exhibit 1 and 2 respectively are documents dated March 15, 1991 which show that the Share certificates number 12626 and 12629 were issued to the plaintiff and each has 2 shares. Plaintiff Exhibit 3 dated 15th May 2007 indicate that share certificate 12629 has plot numbers E197, E197B, E198, E198B and a document dated March 22, 2007 has the following written on it "I Alice W. Gichura hereby confirm that I have visually seen the beacons and location of plot/Bonus number/s E197, E198, E197B, E198B". Thus for the share certificate no.12629, it appears to have the aforementioned plots.
12. A document on page 16 of plaintiff's bundle dated March 22, 2007 shows that the share certificate number 12626 has plot numbers P2889, P2889B, K349 and K349B with shareholder's name Ngunjiri Kori cancelled out and replaced with Alice Wanja Gichura. Those are 4 more plots.
13. Then there is a document on page 23 of plaintiff's bundle which are non-member certificate of plot ownership for plots V3610 and V3611 in the names of the plaintiff. The total plots thus add up to 10 plots.
14. The aforementioned documents have not been challenged in any way. Further, the correspondences between the parties leave no doubts that indeed the plaintiff had been allocated the plots by the defendant. I find that on a balance of probabilities, plaintiff has proved her case to the extent that she is owed 10 plots by the defendant.
15. There is however no supporting evidence for the special damages claim of Kshs. 80,000 together with interest which is the second issue for determination. It is trite law that special damages must be proved as was restated in the Court of Appeal in *Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited* [2016] eKLR.

"...We do not discern from our reading of this decision a departure from the time tested principle that special damages should not only be specifically pleaded but must also be strictly proved..."

16. On mesne profits, evidence ought to be tendered to indicate who has been benefiting or has been receiving profits from the suit parcels:- see *Rajan Shah T/A Rajan Shah & Partners v Bipin P. Shah* [2016] eKLR. In the case at hand, there is nothing to indicate as to who has been in the wrongful occupation of the suit parcels. Thus the claim on mesne profits must fail.
17. In the circumstances, the Court cannot award damages not supported with credible proof. The two prayers for special damages and mesne profits are dismissed.
18. In the final analysis, judgment is hereby entered for the plaintiff against the defendant to the extent that plaintiff is entitled to 10 plots, and the defendants are hereby directed to allocate the plaintiff 10 plots. Noting that there is an avalanche of litigation emanating from Embakasi Ranching Company, I direct that each party bears their own costs of this suit.

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

LUCY N. MBUGUA

JUDGE

In the presence of:-



Mugo for the Plaintiff

Court Assistant: Eddel

