



**Kamande v Ngure & another (Environment & Land Case  
1071 of 2013) [2022] KEELC 2865 (KLR) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 2865 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1071 OF 2013**

**JA MOGENI, J**

**MAY 31, 2022**

**BETWEEN**

**PHILISTER WAGATIRA KAMANDE ..... APPLICANT**

**AND**

**MARY WANGECI NGURE ..... 1<sup>ST</sup> DEFENDANT**

**MUHANJI NELLY SHAMBULA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. Through an amended plaint dated 8/10/2013 the plaintiff brought this suit against the defendant seeking a declaration that the plaintiff is the legal owner of Plot No. 3/182 Soweto Squatters Resettlement Scheme Phase II. She also sought for an order of permanent injunction restricting the 1<sup>st</sup> and 2<sup>nd</sup> defendant or any other person claiming under him from interfering in any way whether by way of trespass, possession or occupation with the suit property.
2. The 1<sup>st</sup> defendant who was duly served with summons to enter appearance and file defence neither entered appearance nor filed defence. An interlocutory injunction was entered against the 1<sup>st</sup> defendant on 16/03/2016 and the plaintiff made an application for formal proof hearing against the 1<sup>st</sup> defendant
3. My brother Judge Kimei ordered on 17/05/2017 that the formal proof and the trial shall be conducted together. On 24/02/2022 the Counsel for the plaintiff after serving the advocate for the 2<sup>nd</sup> defendant several times and the advocate not appearing in court sought to have the matter set down for formal proof. The court set down the matter for formal proof on 23/03/2022 and directed the Counsel for the plaintiff to still serve.
4. The 2<sup>nd</sup> defendant filed a statement of defence and counter-claim dated 16/09/2013 seeking an order of vacant possession of the suit property, damages for trespass and a permanent injunction restraining



the defendants or any person claiming jointly and severally from alienating, trespassing, wasting or damaging the suit property and costs of the suit.

5. Despite being served several times for the matter and the plaintiff's advocate engaging with the advocate for the 2<sup>nd</sup> defendant, they did not attend the hearing nor adduce any evidence.
6. The plaintiff applied for dismissal of the counter-claim entry of judgement and the case proceeded by way of formal proof.

### **Plaintiff's Case**

7. The Plaintiff testified that she wrote a witness statement dated 8/10/2013 and which she asked the court to adopt as her evidence in chief she also asked the court to note about the list documents she filed in court dated 16/09/2013. It was her evidence that she was allocated the suit property on 20/09/2009 at the Soweto Squatters Resettlement scheme phase II. That the 1<sup>st</sup> defendant was allocated lot No. 3/168A on 24/03/1991 colluded with others and made as a result made the 2<sup>nd</sup> defendant to forcefully occupy the plaintiff's land. The plaintiff has demanded that the 2<sup>nd</sup> defendant moves out of the suit property but the defendant has declined prompting her to file this suit.

### **Analysis of Evidence**

8. The Plaintiff testified and attached documents showing that the Plot 3/182 was allocated to her through the Soweto Squatters Resettlement Scheme Phase II vide DDC Min 9/90 OF 26/3/1990 by the Embakasi District Officer Embakasi Division. From her evidence, the 1<sup>st</sup> defendant was allocated Plot No. 3/168A which she sold on 31/01/2011 to one Muhanji Nelly Shambula through the Chief of Savanna Location. She produced a list of 12 documents, including a copy of an allotment letter to the Plaintiff of Plot No. 3/182. A copy of a letter from a Surveyor, Mr Kaigo of City Council to the D.O Embakasi dated 5/03/1990 among others.
9. The Plaintiff produced the letter of the DO of Embakasi who was the Chairman of the Embakasi Sub DDC meeting which allocated her the Plot dated 20/09/1990 list exhibit 3. She also presented a letter at page 26 of her bundle of documents. from Nairobi City Council Ag Director of Housing Development Department dated 23/01/2002, confirming that the plaintiff was the owner of Plot No. 3/182. Further she presented a beacon certificate issued to her from the Directorate of Survey signed by Engineer S.P. Koigu.

### **Disposal**

- 10 The Plaintiff's evidence remains uncontroverted. On the basis of the documents produced by the plaintiff, I find that she has proved her case on a balance of probabilities. I therefore make the following Orders:
  - a. A declaration order is hereby issued that the plaintiff is the lawful owner of Plot No. 3/182 Soweto Squatters Resettlement Scheme Phase II. A permanent injunction is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants or their agents from interfering with the suit property.
  - b. An eviction Order be and is hereby issued against the 2<sup>nd</sup> Defendant and/or his agents compelling her to remove the offending structures that have encroached into the plaintiff's parcel of Plot No. 3/182
  - c. The Plaintiff is awarded costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 31<sup>ST</sup> DAY OF MAY, 2022.**



MOGENI J

**In the presence of:**

Mr. Aswani for the plaintiff.

N/A for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Mr. Vincent Owuor.....Court Assistant

