

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 283 of 2009

WALLACE NJUGUNA MUTHIGAPLAINTIFF

VERSUS

COUNTY COUNCIL OF KIAMBU

DEFENDANT

JUDGMENT

The Plaintiff filed suit vide his plaint dated 15th June, 2009 and filed on the same day in which he prayed for judgment be entered against the Defendant for:

- 1) An order compelling the Defendant to allocate a plot to the Plaintiff
- 2) Alternatively, an order for payment by the Defendant to the Plaintiff an amount equal in value of Plot No. Githunguri/Githangari/T.480.
- 3) Costs of this Suit.

The Plaintiff stated that sometimes in 1980, he surrendered his one acre plot No. GITHUNGURI/1.0 to the Defendant to enable the Defendant to construct a Dispensary and a Tea Buying Centre. He further stated that it was agreed between the Plaintiff and Defendant that in return for the surrendered plot of land, the Defendant would compensate the Plaintiff by allocating to him four plots namely Githunguri/Githangari/T.101, 665, 472 and 480. He further stated that indeed, the Defendant did allocate him the said four plots of land. The Plaintiff further states that he was, however, unable to take possession of Plot Number Githunguri/Githangari/T.480 (hereinafter referred to as the "Suit Property") as the same had been allocated by the Defendant to a third party who was in occupation and possession. The Plaintiff further stated that he had been issued with the Land Certificate over the Suit Property but owing to the fact that a third party was in occupation, on 27/7/02 the Plaintiff returned the Land Certificate to the Defendant to enable the Defendant to issue him with another plot. The Plaintiff stated that to date, the Defendant has not compensated him with another plot, leading him to file this suit.

Despite being duly issued with summons to enter appearance and the Plaintiff on 26/6/09, the Defendant failed to enter appearance or file its defence and at the request of the Plaintiff, interlocutory judgment was entered and the matter proceeded for formal proof.

In his evidence, the Plaintiff stated that he was not able to build on the Suit Property because the owner thereof took the Defendant to Court and the same was declared to be his by the Court. That was when the Plaintiff surrendered his title document in respect to the Suit Property to the Defendant. In his evidence, the Plaintiff produced a copy of the surrendered title. The Plaintiff also produced copies of the minutes of the meetings held by the Defendant in which the Defendant acknowledged that the Plaintiff did in fact surrender his one acre piece of land to the Defendant for the purpose of putting up a Dispensary and a Tea Buying Centre. The Plaintiff also produced evidence to prove that he sent a demand letter to the Defendant but the same did not elicit any response. Further, the Plaintiff told the Court that it was his intention to build a shop on the parcel of land as well as a building for renting out. He stated that if he had obtained the Suit Property way back in 1983 and had built a building thereon and rented it out, he would have received Ksh. 50,000/- per month as rent. He stated that he claims this lost rental income from the Defendant. He further stated that he wishes to be compensated the sum of Ksh. 1.5 million being the value of the Suit Property which was not given to him in exchange for his one acre parcel of land.

The court holds the view that the Plaintiff has proved his case against the Defendant. Indeed, the Defendant received the Plaintiff's one acre of land and failed to fully compensate him as agreed. Accordingly, the court finds that the Defendant owes the Plaintiff the equivalent value of the Suit Property being Ksh. 1,500,000/- as prayed by the Plaintiff. This court also awards the Plaintiff costs of this suit.

SIGNED AND DELIVERED AT NAIROBI ON THE 24TH DAY OF MAY 2013.

MARY M. GITUMBI
JUDGE