



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 723 OF 2011

A.C.K. ST. MONICA'S PARISH DANDORA..... PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI..... DEFENDANTS

JUDGMENT

The Plaintiff filed suit against the Defendant by its Plaint dated 25/1/12 in which it stated that on or about 10/2/85 the Plaintiff applied to the Defendant to be allotted a church plot within Dandora Estate to conduct its services. Pursuant to the application, the Defendant allotted the Plaintiff Plot No. 1245 situated in Dandora Phase 1 (hereinafter referred to as the "Suit Property") on 18th May 2001. The Plaintiff met all the conditions of allotment within the stipulated time and dutifully paid all taxes and rates due to the Defendant but despite several requests, the Defendant is yet to issue the Plaintiff with a lease over the Suit Property. This notwithstanding, the Plaintiff took possession of the Suit Property and has enjoyed quiet and uninterrupted possession thereof. On or about 3/8/11, the Defendant alleged that there was a boundary dispute touching on the Suit Property. The Plaintiff, being unaware of any such dispute, engaged an independent Surveyor who confirmed the beacons delineating the Suit Property. It was confirmed by the independent Surveyor that the beacons were still intact. However, the Defendant sent the Plaintiff notice of its intention to send its Surveyor to the Suit Property to establish the ground position and those of adjacent sub-plots. The Plaintiffs took this to mean that the Defendant's intention was to alienate, alter or otherwise affect the Plaintiff's proprietary rights over the Suit Property. The Plaintiff issued a demand to the Defendant to withdraw that notice but the Defendant did not respond.

For those reasons, the Plaintiff sought for Judgment to be entered against the Defendant for;

- a. An order declaring the 2nd Plaintiff as the legal owner of the Suit Property.
- b. A permanent injunction restraining the Defendant, its servants, employees and/or agents from entering upon, surveying, alienating, altering, disposing of and/or otherwise dealing with the Suit Property.
- c. An order compelling the Defendant to unconditionally issue to the Plaintiff with a lease over the Suit Property in terms of the Letter of Allotment issued to the Plaintiff on 18th May, 2001.
- d. Costs of this suit with interest thereon at court rates until payment in full.
- e. Any further or other relief which this Honourable court deems just in the circumstances.

In spite of entering appearance in this suit on 18/1/12, the Defendant did not file any defence. The matter therefore proceeded for formal proof.

The Plaintiff's case comprised of evidence given by their witness, PW 1 known as Isaac Maina Gathira, who is the Vicar-in-Charge of the 2nd Plaintiff. He testified that they had constructed a permanent church

building on the Suit Property. He stated that on 3/8/11, they received a letter from the District Officer, Dandora written by the Defendant about an alleged dispute between the 2nd Plaintiff and Canaan Skin Quarters and Kenyago Police Lines. He indicated that this letter's contents came as a surprise since they were not aware of any dispute. However, he testified that on 11/1/12 they received a letter from the Defendant, specifically the Director of Housing Development, which stated that they have no record on the allotment of the Suit Property to the 2nd Plaintiff. He confirmed that the 2nd Plaintiff has never received any complaints from the stated Canaan Skin Quarters or Kenyago Police Lines. He further testified that a Surveyor called by the District Officer confirmed the existence of the beacons of the Suit Property in accordance with the Beacon Certificate. He stated that the allegations of a boundary dispute are untrue and unfounded.

I have considered the facts and the evidence adduced in this case. The Plaintiff has established that they were allotted the Suit Property on 18/5/01. However upon receipt of a Notice from the Defendant that they wished to send a Surveyor, the Plaintiffs filed suit based on their fear of being dispossessed. They feared that the real intention of the Defendant was to interfere with their possession and proprietary rights over the Suit Property.

The Plaintiff base their claim over the Suit Property on a Letter of Allotment issued by the Defendant. On that basis, they seek this court's declaration that the 2nd Plaintiff is the legal owner thereof and further seek an order compelling the Defendant to issue to the 2nd Plaintiff with a lease over the Suit Property. They also seek a permanent injunction against the Defendant restraining it from in any way interfering with the Suit Property. Going by the orders sought by the Plaintiff, it is clear that they themselves are aware that a letter of allotment does not fully confer title over land. Hence their request for a lease from the Defendant. The law is clear on the issue of title to land and how the courts should treat title to land.

Section 26(1) of the Land Registration Act states as follows:-

“The Certificate of Title issued by the Registrar upon registration or to a purchaser of land upon a transfer...shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner....and the title of that proprietor shall not be subject to challenge except

- a. ***On the grounds of fraud or misrepresentation to which the person is proved to be a party, or***
- b. ***Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”***

The only document of title that this court can hold as being proof on a *prima facie* basis, that the owner or holder is the indefeasible and absolute owner of land is a Certificate of Title. In this case, the 2nd Plaintiff has not produced a Certificate of Title in respect of the Suit Property. Instead, they only hold a Letter of Allotment. That does not prove that they are the absolute and indefeasible owner of the Suit Property. The Defendant is not obliged under any law to issue to the 2nd Plaintiff with a Certificate of Title or Lease and this court has no authority to compel it to do so as requested by the Plaintiff. Further, the Plaintiff's position in relation to the Suit Property does not entitle them to the permanent injunction sought which aims to allow them exclusive possession over the Suit Property.

My position is that the Plaintiffs have not attained exclusive ownership of the Suit Property by being holders of the Letter of Allotment. They should therefore pursue to obtain a Certificate of Lease from the Defendant. And they should bear in mind that they cannot compel the Defendant to issue the same to them. A reading of the Defendants letter addressed to the 2nd Plaintiff dated 11th January 2012 appears to show recognition of the 2nd Plaintiff as the only allottee of the Suit Property as per the records of the Defendant. The 2nd Plaintiff should take it from there and pursue the issuance of a Certificate of Lease in their name.

In light of the foregoing, I hereby dismiss this suit. Let each party bear their own costs.

SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF AUGUST 2013.

MARY M. GITUMBI

JUDGE