



**Chege & another v Kibui (Environment and Land Case Civil Suit
1257 of 2015) [2022] KEELC 3446 (KLR) (12 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3446 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 1257 OF 2015**

OA ANGOTE, J

MAY 12, 2022

BETWEEN

GEOFFREY WAINAINA CHEGE 1ST PLAINTIFF

KARAGITA (E.A) COMPANY LIMITED 2ND PLAINTIFF

AND

ROBERT WANJAU KIBUI DEFENDANT

JUDGMENT

1. In the plaint dated October 11, 2016, the plaintiffs averred that at all material times, the 1st plaintiff was the registered proprietor of parcel of land known as Nairobi/Block 115/146 which was also referred to as Plot No. FA/1668 (the suit property) at the 2nd plaintiff's company.
2. It was averred by the plaintiffs that the 2nd plaintiff had double allocated the suit property to Chege Ngugi and Peter Kibui Wanjiru in 1982 and 1983 respectively and that on November 8, 1982, upon payment of the mandatory fees of Kshs 200, the 1st plaintiff's father was allocated plot number FA/1668 (the suit property) as the first allottee.
3. According to the plaintiffs, when the 2nd plaintiff realized that there was double allocation of the suit property, it summoned the two shareholders; that Mr. Chege Ngugi who is the 1st plaintiff's father reported to the 2nd plaintiff's offices while Mr. Peter Kibui Wanjiru, who is the defendant's uncle, failed to appear and that on May 15, 2015, the Nairobi City County sent a notice to the 2nd plaintiff to clear the outstanding rates of Kshs. 16,066,193.
4. The 2nd plaintiff averred in the plaint that no letter of allotment would have been issued to Mr. Peter Kibui Wanjiru since he never went to their offices to accept the new plot or at all; that on November 23, 2015, the 1st plaintiff was issued with a certificate of lease for the suit property and that after discovering



that there was a dispute on ownership of the suit property, the defendant unlawfully took possession, sub-divided and proceeded to develop the suit property.

5. In the plaint, the plaintiff has prayed for the following orders;
 - a) A declaration that the parcel of land known as Nairobi/Block 115/146 is private property registered in the name of the 1st Plaintiff.
 - b) An order of eviction be issued against the defendant, his servants and/or agents.
 - c) An interlocutory injunction to restrain the defendant by himself, his servants, workmen or agents or otherwise from trespassing, fencing, constructing or continuing to construct on the suit property.
 - d) A permanent injunction restraining the defendant by himself, his servants, workmen or agents otherwise from trespassing, fencing, constructing or continuing to construct on the suit property.
 - e) A mandatory injunction do issue to compel the defendant to forth with pull down and remove any buildings, structures or materials placed on the suit property.
 - f) General damages against the defendant
 - g) Costs and interest of the suit.
6. In the defence, the defendant averred that he was not aware of the summons which were purportedly issued by the 2nd plaintiff and served to Peter Kibui who had long died in 1995; that the 1st Plaintiff transferred the suit property from Peter Kibui Wanjiru to himself in the presence of the 2nd plaintiff's Director and that his right of ownership of the suit property is absolute.
7. The defendant averred that he paid the full subscription fees to the 2nd plaintiff and has been in occupation of the suit property for over twelve (12) years; that he has built a permanent house on the land worth Kshs. 12,000,000 and that it would be in the interest of justice that the new plot be allocated to the 1st plaintiff.
8. The defendant averred in the defence that he occupied the land after buying it from the 2nd plaintiff; that the 1st plaintiff only acquired the title to the suit property in the year 2015 and that he has been in occupation of the land for over 12 years. The defendant sought in the defence for a declaration that the title deed known as Nairobi Block 115/146 was fraudulently obtained by the 1st plaintiff.

The Plaintiff's case

9. The 1st plaintiff, PW1, informed the court that his late father, Chege Ngugi joined the 2nd plaintiff sometime in the 1980's as a shareholder and that on November 8, 1982, upon payment of the mandatory fees of Kshs 200, Chege Ngugi balloted and was allocated plot number FA/1668 measuring 0.1037 Ha.
10. It was the evidence of PW1 that the 2nd plaintiff later on realized that it had allocated the suit property to two people; that it summoned his father and one Peter Kibui Wanjiru to attempt to resolve the issue of the double allocation and that it is only his father who honoured the 2nd plaintiff's summons. PW1 stated that the issue was never resolved.
11. Pw1 stated that he was aware that his father and Mr. Peter Kibui Wanjiru were summoned again in May, 2015 when the 2nd plaintiff received a demand from Nairobi City County for clearance of rates in regard to the suit property and that his father is the only one who showed up.



12. According to PW1, after the said meeting, the 2nd plaintiff had to allow his father as the first allottee to hold the title for the suit property and clear the outstanding rates for the same; that his father later on transferred to him the suit property and that it came to his attention that the Defendant had taken possession of the suit property, sub-divided and developed it.
13. The 2nd plaintiff's managing Director, PW2, informed the court that Mr. Chege Ngugi joined the 2nd plaintiff's company in the 1980's as a shareholder; that on 8th November, 1982, he paid the mandatory fees of Kshs 200 and balloted for plot No. FA/1668 (the suit property) and that he was the first one to be allocated the land.
14. According to PW2, the 2nd plaintiff later realized that it had double allocated the suit property to Mr. Chege Ngugi and another shareholder, one Peter Kibui Wanjiru, who upon payment of the fees of Kshs 200 on 14th May, 1983 was allocated the same plot.
15. It was the evidence of Pw2 that he summoned the two allottees to his office to resolve the issue of the double allocation; that it is only Mr. Chege Ngugi, the 1st plaintiff's father, who appeared and that the matter could not be resolved in the absence of Mr. Peter Kibui.
16. Pw2 informed the court that he summoned the two parties again in May, 2015 when the 2nd plaintiff received a demand letter from Nairobi City County for clearance of rates which were in arrears; that it was only Mr. Chege who appeared and that the 2nd plaintiff allowed Mr. Chege, as the first allottee of the land, to hold the title and clear the outstanding rates for the suit property.
17. Pw2 stated that the suit property was transferred to the 1st plaintiff by his father, Mr. Chege Ngugi and that the 1st plaintiff was subsequently issued with a certificate of lease dated November 23, 2015.
18. According to PW2, the defendant has taken possession, sub-divided and developed the suit property despite the fact that no letter of allotment has been issued to him and that the defendant has trespassed on the suit property.
19. According to PW2, Peter Anthony Kibui who is said to have died, was 26 years old at the time of his death; that the ballot was given to Peter Kibui in 1983 and that there is no way a ballot could have been given to a person who was 13 years old then. The defendant did not testify.

Submissions

20. The Plaintiffs' advocate submitted that the 1st plaintiff and his father, chege ngugi, are members of the 2nd plaintiff; that the 2nd plaintiff has confirmed that the 1st plaintiff is the owner of the suit property and that the plaintiffs have never sold or transferred the suit property to the defendant
21. The plaintiffs' counsel submitted that there is no evidence to show that the defendant was ever a shareholder in the 2nd plaintiff's company; that there is no proof that the defendant was a beneficiary of Peter Kibui Wanjiru who was a shareholder in the 2nd Plaintiff and that the 1st plaintiff is the owner of the suit property.
22. It was submitted that despite the defendnt alleging that he is a lawful owner of the suit premises, he did not file a counter-claim; that the defendant is an imposter and that the plaintiffs' evidence was not challenged.
23. On the issue of damages, it was submitted by the plaintiffs' counsel that an award of damages for trespass should be awarded; that the suit property is situated in an urban area next to the Eastern by pass; that the 1st plaintiff was deprived the use of the suit property and that an award of Kshs 5,000,000 for general damages is sufficient.



Analysis and Findings

24. The evidence by Pw1 and Pw2 was that the 1st plaintiff's father, Chege Ngugi, became a member of the 2nd plaintiff in 1980, and that after paying the mandatory fee of Kshs 200 on November 8, 1982, he balloted and was allocated the suit property which was by then known as FA/1668.
25. To prove that his father was a member of the 2nd plaintiff, the 1st plaintiff produced in evidence the share certificate number, 482 dated January 3, 1980 in favour of Chege Ngugi. The said share certificate shows that Chege Ngugi was the owner of ten (10) shares in the 2nd plaintiff's company.
26. The 1st plaintiff also produced in evidence the receipt that was issued to Chege Ngugi by the 2nd plaintiff dated 8th November, 1982 for Kshs 200. In addition, the 1st plaintiff produced in evidence a register of the 2nd plaintiff showing the names of the allottees. The said list shows Chege Ngugi was allocated by the 2nd plaintiff plot number FA/1668.
27. The plaintiffs' case is that the same property was allocated to one Peter Kibui Wanjiru, an anomaly that the 2nd plaintiff sought to rectify. The Plaintiffs produced in evidence the receipt that was issued to the said Peter Kibui Wanjiru for Kshs 200 dated May 14, 1983.
28. According to the 2nd plaintiff, when the said Peter Kibui Wanjiru declined to honour the summons that were issued to him, and in view of the fact that the suit property was issued to the 1st plaintiff's father first, they issued to the 1st plaintiff with a lease which led to the issuance of a certificate of lease for land known as Nairobi/Block 15/146 dated 23rd November, 2015.
29. Although the defendant pleaded in his defence that the suit property was allocated to one Peter Kibui Wanjiru, he did not testify in this matter. Indeed, there is no evidence before this court to show that Peter Kibui was issued with a share certificate by the 2nd plaintiff and if the same was issued, that it took precedence over the share certificate that was issued to the 1st plaintiff's father, Chege Ngugi.
30. Indeed, the defendant did not produce in evidence any document to show that he was allocated the suit property by the 1st plaintiff or that the suit property was transferred to him by the 1st plaintiff or one Peter Kibui Wanjiru.
31. The evidence before this court shows that after being allocated the suit property, Chege Ngugi informally transferred the same to his son, the 1st plaintiff. When the lease for parcel of land was eventually issued to the 2nd plaintiff, the evidence before this court shows that the 2nd plaintiff transferred it to the 1st plaintiff by way of a transfer of lease dated November 23, 2015.
32. The 1st plaintiff was then issued with a certificate of lease in respect of the suit property by the government on November 23, 2015 which the 1st plaintiff produced in evidence.
33. Section 26 (1) of the [Land Registration Act](#) provides as follows;
 - “(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-



- (a) On the ground 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.”

34. As stated above, the defendant did not offer any evidence to impugn the 1st plaintiff’s title. Indeed, there is no evidence before this court to show that the 1st plaintiff’s title was procured fraudulently or by misrepresentation to which the Plaintiffs were a party to or illegally, unprocedurally or through a corrupt scheme.
35. To the contrary, the 1st plaintiff tendered evidence to show that the suit property was allocated to his father, Chege Ngugi, by the 2nd plaintiff procedurally, whereafter the same was transferred to him. To that extend, it is the finding of this court that the Plaintiffs have proved their case on a balance of probabilities in so far as ownership of the suit land is concerned.
36. On the question of damages for trespass, the plaintiffs did not produce in evidence documents, including photographs and a surveyor’s report, to show the extent of the defendant’s encroachment on the suit property. Indeed, it is not clear to this court when the defendant trespassed on the land, if at all. That being the case, the court declines to award to the plaintiffs damages.
37. For those reasons, the plaintiffs’ suit is allowed as follows;
- a) A declaration be and is hereby issued that the parcel of land known as Nairobi/Block 115/146 is owned by the 1st plaintiff.
 - b) An order of eviction be and is hereby issued against the Defendant, his servants and/or agents.
 - c) A mandatory injunction be and is hereby issued compelling the defendant to pull down and remove any buildings, structures or material placed on the suit property within 60 days of the date of this judgment.
 - d) The defendant to pay the costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 12TH DAY OF MAY, 2022

O. A. Angote

Judge

In the presence of;

Mr. Muriithi for the Plaintiffs

No appearance for the Defendant

Court Assistant – John Okumu

