



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO. 109 OF 1998**

RICHARD CHELIMO KAPLICH.....PLAINTIFF

**VERSUS**

ROSEMARY WANGUI MAINA.....DEFENDANT

**JUDGMENT**

**Richard Chelimo Kaplich** filed this suit on 27/3/98 against **Rosemary Wangui Maina**, claiming ownership of Land Parcel **Dundori/Muguathi Block 2/178**. He seeks the following orders against the defendant;

- (a) A declaration that the Plaintiff is the registered and lawful owner of all that parcel of land known as Dundori/Muguathi Block 2/178;**
- (b) An order that the defendant's occupation of the suit parcel of land is unlawful;**
- (c) There be an order of vacant possession.**
- (d) Costs and interest.**

The Defendant filed a defence on 7/5/98, denying the Plaintiff's ownership of the land and a counterclaim in which the Defendant seeks the following orders;

- (1) An order that the Defendant is entitled to the land by way of adverse possession.**
- (2) The Plaintiff's title in respect of the suit land be cancelled and a fresh one be issued to the Defendant.**
- (3) That the Plaintiff be permanently enjoined from ever interfering with the Defendant's possession of the title and land.**

The counsel filed a list of agreed issues which are as hereunder;

- (1) Was the plaintiff a shareholder in Kalenjin Enterprises Ltd having two shares thereof at all times material to this suit?**
- (2) Did the Kalenjin Enterprises Ltd have authority to pass title over DUNDORI/MUGUATHI BLOCK 2/178 to the plaintiff?**

**(3) Who is the lawful owner of DUNDORI/MUGUATHI BLOCK 2/178?**

**(4) Is the defendant's occupation of DUNDORI/MUGUATHI BLOCK 2/178 unlawful? Is the defendant a trespasser?**

**(5) Has the defendant been in continuous occupation of the land in dispute herein since 1980? Is she entitled to the said land by adverse possession?**

**(6) Was the plaintiff's title obtained fraudulently?**

**(7) Who between the plaintiff and the defendant was a genuine member of the Kalenjin Enterprises Ltd?**

**(8) Has demand and notice of intention to sue been given to the defendant by the plaintiff prior to the institution of this suit?**

**(9) Is the plaintiff entitled to the relief he has sought in his statement of claim?**

In support of the Plaintiff, the Plaintiff testified that he bought the suit land from **Kibet Chemilgo**, about 1986/1987 and they signed an Agreement (**PEx.No.1**) dated 9/5/1988. He paid all the statutory requirements to the Lands Office and was issued with the title (**P.Ex.2**). Before that, the Director of Kalenjin Enterprises Limited Company in which Kibet Chemilgo was a member showed him the land. PW1 also produced the Share Certificate issued to him. It bears the names of **Kibet Chemilgo**. PW1 further testified that when he was first taken to the land, nobody was living there but presently the Defendant cultivates it. **PW2**, a director of Kalenjin Enterprises or Rift Valley Enterprises brought the register of members which totals 4,413 members but it was not produced in evidence because it was different from what was served on the Defendant. According to him, the property in issue was allocated to Richard Chelimo Kaplich in 1997. He further said that a share was worth Kshs.500 and that a share translated into 1.5 acres. He has been director since 2002 and in 2008, he became Chairman of the Company. He denied that the Defendant is a member of the Kalenjin Company Ltd. He explained the procedure of identifying the land on the ground, that one pays survey fees at the District Commissioner's office, a receipt is issued and is taken to the Allocating Committee. The Committee stamps it 3 times to confirm that the name appears in the Company register and one is entitled to land and the last stamp shows that one is allocated a particular Plot.

On the other hand, the Defendant claims to have bought the suit land on 4/12/1980 from **Musonik Towett**; that she bought 50 shares and Share Certificate was No. 5030. She produced a copy of the Sale Agreement and police abstract because the original Agreement got lost. At the time of sale, the land was not yet surveyed and the seller showed her 2 acres to cultivate as she awaited survey. She found somebody by name **Kiplangat**, who offered to transfer to her 2 acres so that she could cultivate. They went to the Company to get authority to transfer and the Company wrote a letter (**D.Ex.4**) allowing the transfer from the seller to her. The Defendant was issued with a Share Certificate (**D.Ex.5**) and shareholders card (**D.Ex.6**). Survey was done and it was later changed to **Plot 178**. DW1 explained that before allocation of the Plot, the Share Certificate was stamped at the back. DW1 said that she had initially got 2 acres but when survey was done, she got 3 acres which she has developed since 1983 and nobody ever claimed the land till 1997 when she went to get the title. She found the Plaintiff had collected the title. It is then that she received a letter from an Advocate asking her to vacate the land (**D.Ex.7**). She went to explain to the Lands Officer who wrote to Richard to return the title deed to the Lands office (**D.Ex.8**). The title was never returned and she placed a caution on the land (**D.Ex.9**). Demands for rate have been sent to her and she has been paying them till 22/11/2011 (**D.Ex.10 & 11**). DW1 also produced the allottee's register.

The Defendant called one witness, Daniel Maina Kirugi (DW2), a shareholder in Rift Valley Enterprises who once served as Director from 13/7/1998 and ceased to be one on 29/11/2008. He owns Plot **Kiambogo/Mitimingi Block 3/4260**. He knows both the Plaintiff and Defendant. According to him, the Plaintiff owns land in Baruti which was once Company land. He recalled that the Company had 4 pieces

of land, **Koilel, Subukia, Baruti** and two others in Molo. His evidence was that the suit land belongs to the Defendant and that even the register of members did confirm that. He blamed irregular issuance of titles on the Lands Office.

The disputed land initially belonged to Rift Valley Enterprises Limited which is also known as **Kalenjin Enterprises Limited**. This was a land buying company where the members bought shares and were allocated land. From the evidence on record, neither the Plaintiff nor the Defendant were original members of Rift Valley Enterprises but they purchased shares from members of the said Company. I find that Kalenjin Enterprises and Rift Valley Enterprises to be one and the same entity because **DW2, Kirugi**, a former director, testified to that fact. The exhibits produced in evidence also attest to that fact. Whereas, the Certificate of Company Shares (**D.Ex.4**) issued to the Defendant, Rose Mary Wangui Maina was issued by Kalenjin Enterprises Limited, P. O. Box 1110, Nakuru. (**Ex. No.4**), a letter of transfer of shares to the Defendant dated 4/12/1980 and (**D.Ex.6**), indicating the shareholder of Plot 178 were issued by Rift Valley Enterprises, P. O. Box 1110, Nakuru.

The Defendant produced in evidence a Sale Agreement dated 4/12/1980 between her and **David Musonik Towett** for 50 paid-up shares. On the same date, Rift Valley Enterprises Limited acknowledged the sale and had no objection to the transfer of shares from David Musonik Towett to the defendant. Thereafter, the Defendant was issued with a Share Certificate dated 12/2/1981 for the 50 shares she bought. At the back of the Share Certificate, the Company stamped and indicated that she was allocated Plot 178.

**DW1** testified that she has been in possession of the land since the sale in 1980 and the Plaintiff has never been. **DW1's** evidence was corroborated by that of **DW2** and the two letters written by the District Commissioner, Nakuru on 20/8/1997 and the Assistant Land Registrar, Nakuru on 9/9/1997, confirming that the land belonged to the Defendant, Rosemary. Further to the above, the Defendant has been paying the rates in respect of the said Plot as evidenced by the rate demand note (**D.Ex.10**) and payment (**D.Ex.11**). The Plaintiff produced none of the above. The Kalenjin Enterprises list of members which was admitted as **Ex.4(a)** and **(b)** by consent, was not of any help to the court. It is incomplete, and the court could not determine when the entries thereon were made.

Although, the Plaintiff produced in evidence a Sale Agreement – (**P.Ex.No.1**) dated 9/5/1988 and a Share Certificate issued to the original shareholder Chemilgo, it seems the Company never got to know about the said sale as it was not acknowledged. The Sale Agreement did not have the plot number which was the subject of the sale. The shares were never changed from the original allottee to the Plaintiff and the Plaintiff was never issued with a Share Certificate. It is surprising how the Plaintiff got to be issued with a title following a directive from the District Officer, Municipality Division, Nakuru. The Plot No. 178 had already been allotted to the Defendant and there is no explanation how the District Officer came by the number 178. The issuance of the Plot numbers should have emanated from the Rift Valley Enterprises, Allotment Committee, as was the case of the Defendant. **PW2**, a former director of the company explained the process of allotment of land and his evidence does corroborate that of **DW1** that after issuance of the Certificate and receipt, the Allocating Committee stamped on it showing what her plot number was allocated. It seems the Plaintiff never followed that process. I find that even though the title deed was issued to the Plaintiff in 1997, it was issued through fraudulent and dubious means. There is overwhelming evidence to demonstrate that the Defendant bought the share in 1980 from a member of the Company, has been in possession, pays rates, was specifically allocated Plot 178 by the Company. The District Officer had no business allocating Plots to the Plaintiff. I am satisfied on a balance of probability that the suit land belongs to the Defendant. It has not been disputed that as of 1997 when the Plaintiff tried to evict the Defendant, she had been on the land for over 12 years – i.e. 17 years. She had acquired adverse rights to those of the Plaintiff. I hereby dismiss the Plaintiff's claim with costs to the Defendant. I grant the Defendant's counterclaim in the following terms;

- (1) THAT the Defendant is entitled to the suit land.**
- (2) The title held by the Plaintiff is hereby cancelled.**
- (3) A fresh title be issued to the Defendant, Rosemary Wangui Maina.**

**(4) The Plaintiff is permanently enjoined from interfering or trespassing onto the said parcel of land.**

**(5) The Plaintiff will bear costs of the suit and the counterclaim.**

It is so ordered.

**DATED and DELIVERED** this 22<sup>nd</sup> day of February, 2012.

**R. P. V. WENDOH**  
**JUDGE**

**PRESENT**

Ms Wanjiru for Plaintiff/Applicant

Ogola for Defendant/Respondent absent

Kennedy – Court Clerk