



**Kariuki v Cockburn & another (Environment & Land Case
392 of 2019) [2022] KEELC 2374 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 2374 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 392 OF 2019
EK WABWOTO, J
JUNE 30, 2022**

BETWEEN

CHEGGE HENRY DAVIES KARIUKI PLAINTIFF

AND

E.G. COCKBURN 1ST DEFENDANT

NAIROBI CITY COUNTY 2ND DEFENDANT

JUDGMENT

1. The plaintiff has filed the subject suit vide plaint dated December 4, 2019, and in respect of which same seeks the following reliefs: -
 - i. The honourable court be pleased to order that the records held by the 2nd defendant over the plaintiff's property be restored and reinstated in the name of the plaintiff
 - ii. This honourable court be pleased to issue an order of permanent injunction against the defendant's, by themselves, or through their servants, employees or agent from transferring, selling, changing, alienating and/or in any way dealing with the suit property.
 - iii. Costs of the suit.
 - iv. Any other relief the honourable court may deem fit and just to grant.
2. The suit is contested, the 2nd defendant filed its statement of defence dated September 24, 2020 and later filed its amended statement of defence dated March 25, 2022. In its defence, the 2nd defendant denied all the allegations made in the plaintiff's plaint and urged the court to dismiss the suit against them. The 2nd defendant did not call any witness to testify on their behalf. The 1st defendant despite being served never filed any statement of defence and equally never called any defence witness.



3. Subsequently, following the close of the pleadings, the subject matter was fixed for hearing on January 18, 2022 when the plaintiff's case was heard and later fixed for defence hearing on March 28, 2022 wherein the 2nd defendant closed its case without calling any witness.

Plaintiffs Case

4. The plaintiff Chegge Henry Davies Kariuki testified as PW1. During his testimony, he adopted his witness statement dated November 22, 2019 as part of his evidence in chief. He also produced the list and bundle of documents dated December 4, 2019 and further list and bundle dated October 26, 2021.
5. In his plaint the plaintiff stated that he is the legal owner of all that parcel of land known as L.R. No 12672/134 measuring 0.2060Ha located in Runda Estate, Nairobi County. He averred that he has been the registered owner since the year 2002, having acquired the same as a shareholder of the Farmers Cooperative Society when the farm was sub-divided.
6. At the hearing, he stated that he was surprised when he discovered that his documents were missing from the records of the 2nd defendant. On following up with the officers of the 2nd defendant, he was informed that his records could not be traced.
7. It was his further testimony that he had been paying all rates as and when they fell due and had no arrears pending. He was equally surprised to hear that the 1st defendant had been indicated as the owner of the property as per the records of the 2nd defendant.
8. He further stated that, he had not transferred or disposed off his property in any way to any 3rd party and that a search at the Land's registry that was conducted on February 25, 2019 still indicated his name as the registered owner.
9. In cross-examination, PW1 stated that the suit property was a lease hold and he had honoured all the terms of the lease. He had paid all the land rates at the time of filing this suit and if there was any outstanding rate amount then he was not aware of the same.
10. In re-examination by his counsel, he reiterated that he had no rates pending for payment since he had paid all the amount that had been demanded by the 2nd defendant. He also stated that he realized his details were missing from the records of the 2nd defendant sometimes in 2019 and all his efforts to follow up with the 2nd defendant have not been fruitful.

Defendants Case

11. Upon being served with the plaint and summons to enter appearance, the 1st defendant never filed any defence against the plaintiff's claim and this necessitated the matter to proceed as undefended against them and their case was closed without them calling any defence witness nor adducing any evidence.
12. As for the 2nd defendant, they filed a statement of defence which was later amended on March 25, 2022. They however never called any witness to testify on behalf and they equally closed their case on March 28, 2022.

The Plaintiff's Submissions

13. Following the close of the plaintiff's case as well as the defendants case, the court directed the parties to file and exchange their written submissions for consideration. The plaintiff's written submissions were filed by Mwaniki Gachoka & Co. Advocates dated May 17, 2022.



14. In the plaintiff's written submissions, counsel identified only one issue for determination and specifically whether the plaintiff is entitled to the prayers sought in his plaint.
15. Counsel submitted that article 40 of the *Constitution* of Kenya protects a person's interest or right over their property. Counsel stated that in the instant case, the Plaintiff was being deprived of his property by unscrupulous and faceless persons. It was also submitted that because of the defendants' actions, the plaintiff cannot be able to pay rates as and when they fall due and neither can he be able to obtain a rate's clearance certificate when in need of the same.
16. It was also submitted that, the plaintiff is apprehensive that the 2nd defendant may take action against his property under the *Ratings Act* and hence the need to have the reinstatement of the suit property records to enable the plaintiff continue using his property and paying rates as and when they fall due.
17. Counsel further submitted that, through the evidence that was tendered, the plaintiff had proved his case against the defendant on a balance of probability and was deserving of the remedies sought including orders for costs of the suit since the filing of the same was necessitated by failure of the 2nd defendant to amicably settle the matter.
18. In support of the plaintiff's case, counsel relied on the Court of Appeal case of *Macharia Mwangi Maina & 87 others v Davidson Mwangi Kagiri* (2014) eKLR to the effect that this court has a sacrosanct duty to deliver justice since there can be no wrong without a remedy.

2nd Defendant's Submissions

19. The 2nd defendant filed written submissions dated May 6, 2022 through M/S Roba & Associates. Counsel equally submitted that the main issue for determination was whether the plaintiff has proved his case against the 2nd defendant to the required standard of proof. Counsel added that during the hearing, the plaintiff was taken to task to explain whether there was any evidence that the 2nd defendant was responsible for the alleged alteration of his details as relates to the suit property. He added that the plaintiff had admitted that if there were any changes to his records, then the same was due to systems errors and not necessarily actions or inactions of the 2nd defendant.
20. On the prayers sought by the plaintiff, counsel relied on the case of *Nguruman Limited v Jan Bonde Nielson & 2 others* CA No 77 of 2012(2014) eKLR and submitted that the no proper basis had been laid for grant of a permanent injunction as was outlined in that case and he urged the court to dismiss the Plaintiff's suit.

Analysis and Determination

21. Having evaluated the pleadings on record and the oral evidence that was tendered by the plaintiff, I am of the humble view that the following two issues arise for determination by this court: -
 - i. Whether the plaintiff has proved his case to the required standard
 - ii. whether the plaintiff is entitled to the orders sought in the Plaint.

Issue No 1

Whether the plaintiff has proved his case to the required standard.

22. The plaintiff being the registered owner of the suit property L.R. NO 12672/134 measuring 0.2060Ha located in Runda Estate, Nairobi was supposed to learn that his records had been altered at the 2nd defendant's office's to reflect the names of the 1st defendant. The Plaintiff further averred that on



- February 28, 2019 he had been issued with a land rates payment receipt by the 2nd defendant which confirmed that he had paid all outstanding rates of Kshs 1,101,199 and was left with a nil balance.
23. Subsequently, when he tried to obtain a rates clearance certificate from the 2nd defendant when he had wanted to develop the suit property, he was surprised when he was issued with a property rates payment dated October 2, 2019 issued in the names of E.G. Cokburn and was further informed that it was the only record available. This was despite the fact that he was still registered as the legal owner at the land's registry pursuant to a search obtained before the filing of the suit.
24. On his part, the plaintiff led evidence that he is still the registered owner of the suit property albeit as per the records held at the Land's registry. He also led evidence to the effect that his records at the 2nd defendant had been altered to reflect the names of the 1st defendant and according to him the 1st defendant was a total stranger. Who then is this man E.G. Cockburn? Is he the mysterious faceless character that perpetrated the alteration of the 2nd defendants records to his advantage?
25. It is worth noting that the 1st defendant never participated in the pleadings despite being served. The 2nd defendant only filed a statement of defence and written submissions but never called any witness to controvert the allegations made against them by the plaintiff. Therefore, the Defendant defence remains mere allegations and the plaintiff testimony was not rebutted. See the case of *Billsab Matiangi v Kisii Bottlers Limited & another* (2021) eKLR, where the court held that: -
- “Where a plaintiff gives evidence in support of her case, but the defendant fails to call any witness in support of its allegations, then the plaintiff's evidence is uncontroverted and the statement of defence remains mere allegations”
26. However, uncontroverted evidence is not automatic evidence and the plaintiff still has an obligation to prove his case to the required standard of probabilities.
27. In the instant suit, it is not in doubt that the plaintiff is still the registered owner of the suit property.
28. Therefore, this court finds that no cogent explanation has been offered by the 2nd defendant as to why its records were altered to reflect the names of the 1st defendant who was not the owner of the suit property and as such the plaintiff has proved his case against the defendants to the required standard.

Issue No. 2

Whether the plaintiff is entitled to the prayer's sought in the plaint.

29. The plaintiff prayed for an order that the records held by the 2nd defendant over the plaintiff's property be restored and reinstated in his name, he also sought for a permanent injunction against the defendants from dealing in any way with the suit property.
30. Having already found that the plaintiff has proved his case against the defendant to the required standard, the court finds and holds that is equally entitled to the prayers sought and I have no reason whatsoever not to grant them.
31. On the issue of costs, section 27 of the *Civil Procedure Act* gives the court the discretion to grant costs and ordinarily costs do follow the suit. The plaintiff herein has succeeded in proving his case and considering that the suit was filed due to the inaction of the 2nd defendant failing to rectify the records and further considering the anguish the plaintiff has been subjected to, he is entitled to costs which shall be borne by the defendants herein.



Final Disposition

32. From the foregoing analysis, the plaintiff has proved his case on a balance of probabilities and in this regard, this court makes the final orders; -

- a) The records held by the 2nd defendant in respect to L.R. No 12672/134 be restored and reinstated in the name of the Plaintiff.
- b) An order of permanent injunction be and is hereby issued against the defendants, by themselves, or through their servants, employee's or agent from transferring, selling, changing, alienating and or in any way dealing with the suit property save only with the consent of the plaintiff.
- c) The plaintiff is awarded costs of the suit to be paid by the 1st and 2nd defendants.

33. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE 2022.

E. K. WABWOTO

JUDGE

In the Virtual Presence of: -

Mr. Mbabu holding brief for Mr. Kamau Muturi the Plaintiff.

N/A for the 1st Defendant.

N/A for the 2nd Defendant.

Court Assistant: Caroline Nafuna.

E. K. WABWOTO

JUDGE

