



**Wanandeg Housing Cooperative Society Limited v Kenya Airports Authority & another  
(Environment & Land Case 1511 of 2014) [2022] KEELC 3096 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3096 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1511 OF 2014  
LC KOMINGOI, J  
JUNE 30, 2022**

**BETWEEN**

**WANANDEGE HOUSING COOPERATIVE SOCIETY LIMITED ..... PLAINTIFF**

**AND**

**KENYA AIRPORTS AUTHORITY ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LANDS REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By a Plaint dated December 3, 2014 and amended on 17<sup>th</sup> December 2014; the Plaintiff prays for judgement against the Defendants for:-
  - a. A permanent injunction restraining the 1<sup>st</sup> Defendant themselves, its agents and or servants from trespassing into, interfering with, obstructing access to the property known as Land Reference Number 9042/699.
  - b. A declaration that the property known as Land Reference Number 9042/699 belongs to the Plaintiff.
  - c. A declaration that the Defendant's act of entering into and demolishing structures on the Plaintiff's property was arbitrary, illegal and contrary to the law.
  - d. General damages.
  - e. Special damages.
  - f. Costs of the suit plus interest.
2. It is the Plaintiff's case that it is the registered proprietor of all that property known as Land Reference Number 9042/699 which was originally registered in the name of one Isaya Ingosi Manguya now deceased. It further averred that the suit property was transferred to one Zedekiah Anyonyi Engosi by



way of a deed of assent, who later sold it to the plaintiff and transferred the same by a transfer dated 8<sup>th</sup> August 2012.

3. The Plaintiff contended that it obtained an Environmental Impact Assessment Licence from NEMA on January 13, 2014 and approvals from the Urban Planning & Housing Department on September 18, 2014 for construction of proposed domestic building and commenced construction work on about 23<sup>rd</sup> October 2014.
4. The Plaintiff also stated that by a letter dated November 3, 2014, the 1<sup>st</sup> Defendant demanded that it stops the ongoing construction works and remove all structures and materials on the property known as Land Reference No.9042/667 yet the Plaintiff's property is known as Land Reference Number 9042/699. It stated that before it could reply to the 1<sup>st</sup> Defendant's letter, the 1<sup>st</sup> Defendant illegally entered the suit property and demolished part of the ongoing construction valued at Kshs.3,508,235/= as at 19<sup>th</sup> November 2014. It also stated that Jasir Contractors who were it contractors on site lost items valued at Kshs.3,839,720/=.
5. It is the Plaintiff's case that the Defendant's actions amount to trespass and destruction of the Plaintiff's property in contravention to its rights over private property.

#### **The 1<sup>st</sup> Defendant's case**

6. The 1<sup>st</sup> Defendant filed the defence dated 11<sup>th</sup> February 2015. It denied all the allegations contained in the plaint and contended that it is the proprietor of the property known as Land Reference Number 9042/667 and that Land Reference Number 9042/699 is part and parcel of Land Reference Number 9042/667. It further contended that the same is public land that was set aside for the use of the 1<sup>st</sup> Defendant and it is not capable of being alienated to the Plaintiff or any other person.
7. The 2<sup>nd</sup> Defendant failed to enter appearance and/or file a defence.

#### **The Plaintiff's evidence**

8. PW1, Ephantus Maina Kibaki, the Chief Executive Officer of the Plaintiff, testified on 16<sup>th</sup> October 2019. His witness statement dated 6<sup>th</sup> February 2017 was adopted as part of his evidence in chief. He told the court that the Plaintiff acquired the suit plot located at Embakasi near the Embakasi police station in 2011 for purposes of constructing houses for its members.
9. He stated that the Plaintiff approached Zedekiah Anyonyi who was a son of Isaya Ingosi (the registered owner) who was then deceased. It was his testimony that the Plaintiff's lawyers conducted due diligence and confirmed that the land belonged to Isaya Ingosi.
10. He stated that in August 2012, Zedekiah Anyoni Ingosi did a Deed of Assent as he was the representative of the estate of the deceased. He added that the Plaintiff then entered into a sale agreement with Zedekiah Ingosi, Kshs.4 million was paid on execution of the agreement and a further Kshs.6 million was paid later. He testified that Covenant Geo-Survey systems conducted a survey and established that the suit property existed. He added that Rubyland Limited conducted a valuation report and prepared the report dated 4<sup>th</sup> February 2012
11. It was his testimony that the Plaintiff commenced construction after obtaining approvals in 2014. He stated that the 1<sup>st</sup> Defendant claimed that it owned the property but the documents it had were of different parcel of land from the suit property. He testified that the late Isaya Ingosi used to pay rates for the suit property and that the Plaintiff has a title deed for the suit land.



12. When he was cross-examined, he stated that the valuers and surveyors confirmed that the property existed and that they did a search and confirmed that the property existed. When he was referred to the application for official search form dated 31<sup>st</sup> January 2012, he stated that it does not show results of the search.
13. When he was referred to the grant issued to Isaya Ingosi Manguya for 99 years with effect from 1<sup>st</sup> August 1998 and its accompanying deed plan dated 17<sup>th</sup> August 2001 and the 1<sup>st</sup> Defendant's grant issued on 1<sup>st</sup> May 1998 accompanied by a deed plan dated 13<sup>th</sup> July 1998, he stated that the Plaintiff knew that the land was available from the survey report. When he was referred to the Plaintiff's survey report dated January 2011, he stated that the purpose of the request for survey was to establish the beacons. He further stated that the beacons were not there and they were reinstated.
14. When he was re-examined, he stated that the Plaintiff conducted a search and that the valuer also conducted a search which established that Isaya Ingosi (deceased) was the registered owner. He stated that the letter of allotment issued to Isaya Ingosi (deceased) is dated 4<sup>th</sup> July 1998 for LR No.9042/699 while the 1<sup>st</sup> Defendant's grant is issued with effect from 1<sup>st</sup> May 1998 for L.R No.9042/667 thus they are different parcels of land.

### **The 1<sup>st</sup> Defendant's evidence**

15. DW1 Rashid Abdullahi, a surveyor employed by the 1<sup>st</sup> Defendant testified on 28<sup>th</sup> October 2021 and on 9<sup>th</sup> February 2022. His witness statement dated 28<sup>th</sup> May 2015 was adopted as his evidence in chief. He stated that the entire L.R No.9042/699 falls within the 1<sup>st</sup> Defendant's land as the Plaintiff's deed plan is within LR 9042/667 belonging to the 1<sup>st</sup> Defendant reserved for its staff houses.
16. When cross-examined, he stated that L.R No.9042/667 belongs to the 1<sup>st</sup> Defendant issued under deed plan No.21860 of 13<sup>th</sup> July 1998 and the title was issued on 23<sup>rd</sup> July 1999 while the Plaintiff's title was issued on 21<sup>st</sup> May 2002. He stated I.R No.8873 (L.R Number 9042/699) is under deed plan No.237018 but they do not refer to two different plots as 699 is inside 667, the 1<sup>st</sup> Defendant's parcel being the bigger one.
17. He stated that and that LR 9042/699 registered in the Plaintiff's name borders L.R No.9042/18. He stated that as a land surveyor, parcel number 699 is an excision from 667 belonging to the 1<sup>st</sup> Defendant and that the excision to the 1<sup>st</sup> Defendant it was illegal. He stated that the first grant was surveyed and the beacons are there. When he was referred to LR NO 9042/669 measuring 0.100 hectares and signed in 2001, he stated that it is issued ten (10) years after the first grant.
18. When he was re-examined, he stated that both LR No. 9042/669 and LR No. 9042/ 667 border LR No.9042/18. When referred to the two (2) deed plans, he stated that they show that the Plaintiff's land is inside L.R No.9042/667.
19. At the close of the oral testimonies parties tendered written submissions.

### **The Plaintiff's submissions**

20. They are dated 1<sup>st</sup> April 2022. Counsel for the Plaintiff raised on the following issues for determination:
  - a. Whether the Plaintiff is the legally registered proprietor of the property known as Land Reference Number 9042/699?



- b. Whether the Defendant illegally and arbitrarily entered into and demolished part of the ongoing construction work, materials and structures on the suit property belonging to the Plaintiff.
  - c. Whether the Plaintiff is entitled to general and special damages.
  - d. Whether the Plaintiff is entitled to costs of the suit.
21. On whether the Plaintiff is the legally registered proprietor of the suit property, Counsel for the Plaintiff submitted that the Plaintiff established that the suit land was originally allotted to one Isaya Ingosi (deceased) whose son obtained it by assent and sold it to the Plaintiff. He argued that since there is no evidence that the 1<sup>st</sup> Defendant's land was surveyed to give rise to Land Reference Number 9042/699, then there was no alienation of the 1<sup>st</sup> Defendant's land known as LR No.9042/667. He relied on the case of *Abdullahi Sheikh Ahmed v Mandera County Government* [2020]e KLR. He further submitted that while the 1<sup>st</sup> Defendant contended that ownership of the suit property by the Plaintiff is void as it was acquired illegally, it did not set out any particulars of fraud or misrepresentation in its defence and did not dispute the records held by the lands office.
  22. It was counsel's submission that the 1<sup>st</sup> Defendant trespassed on its property in the meaning of Section 2(1) of the *Trespass Act*, Cap 294 and interfered with its ongoing construction thus contravening its constitutional right over private property declared under Article 40, 60(1) (b) of *the Constitution* and Section 24 of the *Land Registration Act*. He further submitted that the 1<sup>st</sup> Defendant's actions were contrary to Section 21 of the *Land Registration Act*.
  23. On the issue whether the Plaintiff is entitled to general and special damages, he submitted that the Plaintiff has claimed a total of Kshs.7,347,955.49/= which includes value of work done and materials on the site. He relied on the case of *Rhoda S Kiilu v Jianxi Water and Hydropower Construction Kenya Limited* [2019]eKLR. He also submitted that the suit property was valued at ksh.10,400,000/= before the 1<sup>st</sup> Defendant trespassed and demolished part of the ongoing construction work, materials and structures thereon and that the construction project before demolition was valued at kshs.59,114,736/= as per the valuation statement dated 29<sup>th</sup> November 2014.

### **The 1<sup>st</sup> Defendant's submissions**

24. They are dated 23<sup>rd</sup> April 2022. Counsel for the 1<sup>st</sup> Defendant submitted that the 1<sup>st</sup> Defendant has authority to acquire land under Section 12 (3) (g) of the Kenya Airports Act, Cap 395 Laws of Kenya.
25. He submitted that the Plaintiff and the 1<sup>st</sup> Defendant's titles are subject to provisions of the *Government Land Act*, Cap 280 Laws of Kenya (now repealed). He further submitted that having established that L.R No.9042/669 is situate within L.R No.9042/667, the title held by the Plaintiff was obtained contrary to Section 12(3) (g) of the *Kenya Airports Authority Act*, Cap 395 and Section 2 of the Government Land Act. He added that the 1<sup>st</sup> Defendant is therefore the one who is entitled to quiet possession by virtue of Section 23(1) (a) & (b) of the Land Act No.6 of 2012. He relied on the case of *Elijah Makeri Nyangw'ra v Stephen Mungai Njuguna & Another* [2013] eKLR.
26. It was also counsel's submission that the Plaintiff does not qualify as an innocent purchaser for value as the vendor who sold the land to it had no authority to alienate the land. He relied on the case of *Mwangi James Njebia v Janetta Wanjiku Mwangi & Another* [2021] eKLR.
27. He put forward the case of *Alice Chemutai Too v Nickson Kipkurui Korir & 2 other* [2015] eKLR to submit that under Section 26 of the *Land Registration Act*, title can be impeached on grounds of having been acquired through misrepresentation or illegally or unprocedurally.



28. Counsel also relied on the case of *Gitwary Investment Limited v Tajmal Limited and 3 others* [2006] eKLR to submit that the title held by the 1<sup>st</sup> Defendant takes precedence over the suit property and urged the court to find that actions by the 1<sup>st</sup> Defendant to demolish the structures erected by the Plaintiff were legal.
29. On the Plaintiff's prayer for special and general damages, he submitted that the Plaintiff failed to plead and prove special damages. He relied on the case of *Hahn v Singh* Civil Appeal No.42 of 1983 [1985] KLR 716. It was also his submission that since the Plaintiff has failed to prove trespass by virtue of the 1<sup>st</sup> Defendant being the bona fide owner of the suit property, any claim for damages whether general or special must fail. He relied on the case of *Park Towers Ltd v John Mithamo Njika* [2014] eKLR.
30. I have considered the pleadings and the evidence on record. I have also considered the written submissions and the authorities cited. The issues for determination are:-
- a. Whether the suit parcel LR NO 9042/699 is excised from L.R No.9042/667.
  - b. Whether the excision, if any, was regular.
  - c. Is the Plaintiff entitled to the reliefs sought?
  - d. Who should bear costs of this suit?
31. The Plaintiff's grant is L.R 88731 for L.R No 9042/699 issued with effect from 1<sup>st</sup> August 1998 measuring 0.1004 of a hectare, and it was signed on 28<sup>th</sup> December 2001 while the 1<sup>st</sup> Defendant's grant is L.R 77020 for L.R No.9042/667 issued with effect from 1<sup>st</sup> May 1998, measuring 15.24 hectares and it is signed on 23<sup>rd</sup> July 1998. It has been established by evidence that the Plaintiff's parcel is a portion of the Defendant's land.
32. It was the Plaintiff's testimony that L.R No 9042/699 was originally allotted to Isaya Ingosi Manguya vide the letter of allotment dated 24<sup>th</sup> July 1998. On the other hand, by 1<sup>st</sup> May 1988, L.R NO.9042/667 had been alienated and allotted to the 1<sup>st</sup> Defendant. It would therefore be impossible for the commissioner of lands to issue the grant I.R 88731 for L.R No 9042/699 which is contained in L.R 77020 L.R No.9042/667 since that portion had been alienated already and allotted to the 1<sup>st</sup> Defendant. Had the portion been un-alienated, then it would have been available for allocation to another person by the commissioner of lands.
33. Section 2 of the *Government Land Act*, Cap 280 Laws of Kenya (now repealed), defines un-alienated land as; "Un-alienated Government land" means Government land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment."
34. Condition No.6 of the Grant issued to the 1<sup>st</sup> Defendant states, "the grantee shall not subdivide the land without the prior consent in writing of the commissioner." The only way L.R No.9042/699 would be hived from the 1<sup>st</sup> Defendant's land being L.R NO.9042/667 is if the 1<sup>st</sup> Defendant did it with the consent of the commissioner of lands.
35. The Plaintiff's claim he is the registered owner of L.R NO 9042/699. It is its case that they bought from Zedekiah Anyonyi Ingosi who is the Administrator of the Estate of Isaya Ingosi Manguya. The said deceased's Title is L.R No 88731 for 99 years with effect from 1<sup>st</sup> August 1998. The same measures 0.1004 hectares. The Deed Plans attached is No 237018 dated 17<sup>th</sup> August 2001. The Assent to Zedekiah Anyonyi Egosi was registered on 3<sup>rd</sup> September 2012. On the same date it was transferred to the Plaintiff.



36. On the other hand, the title held by the 1<sup>st</sup> Defendant is LR NO 9042/667 (IR NO 77020). The same is from 1<sup>st</sup> March 1998. The approximate area is 15.42 hectares. The Deed Plans attached is No 218610 signed on 13<sup>th</sup> July 1998. The title was issued on 23<sup>rd</sup> July 1999. DW1 Rashid Abdullahi testified in court and took the court through the deed plans produced by the Plaintiff and the Defendant. He told the court that LR NO 9042/699 claimed by the Plaintiff is inside the 1<sup>st</sup> Defendant LR NO 9042/667.
37. The 1<sup>st</sup> Defendant's title is for a lease of 99 years from 1<sup>st</sup> May 1998 whereas the Plaintiff's is from 1<sup>st</sup> August 1998. It is not in dispute that both titles were subject to provisions of the Government Land Act (Cap 280 Laws of Kenya) Repealed.
38. DW1's evidence that the Plaintiff purported LR NO 9042/699 is inside LR NO 9042/667 was not challenged. The Plaintiff's claim that theirs is a different parcel cannot hold water as it was illegally excised from the 1<sup>st</sup> Defendant's parcel. This was done contrary to Section 12(3) (g) of the KAA Act (Cap 395 Laws of Kenya) which provides that:-

“Without prejudice to the generality of subsections (1) and (2), the Authority shall have power to-

Sell, let or otherwise dispose of any property, movable or immovable, which is in the opinion of the Board is not necessary for the purpose of the Authority:

Provided that the Authority shall not sell, let or otherwise dispose of any building or land vested in it by virtue of section 4 except with the consent of and subject to any conditions imposed by the Government”.

39. It is the Plaintiff's claim that it did due diligence before buying the suit property from Zedekiah Ingosi. In the case of Elijah Makeri Nyangw'ara vs Stephen Mungai Njuguna & Another [2013] eKLR, the court held that:-

“The title in hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. Hon Justice Munyao Sila in the case while considering the application of Section 26(1)(a) and (b) of the Land Registration Act rendered himself as follows:-

“the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme”.

40. I also find that the Plaintiff cannot be treated as a bonafide purchaser for value without notice as the person who sold it the land had no good title to pass on to the Plaintiff. I am guided by the case of *Katende vs Haridan & Co. Ltd* [2008] 2 EA 173.

Had the Plaintiff done due diligence it would have realized that they were buying part of the 1<sup>st</sup> Defendant's land. I find that the excision of LR NO 9042/699 from LR No 9042/667 was irregular.

41. Section 26 of the Land Registration Act 2012 provides that:-

“(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.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

42. I agree with the 1<sup>st</sup> Defendant submissions that the 1<sup>st</sup> Defendant’s title was the first one to be issued. The Plaintiff’s came later. In the case of *Gitwany Investment Ltd vs Tajmal Ltd & 3 Others* [2006] eKLR Lenaola J observed thus:-

“My understanding is therefore that the title given to Gitwany in the first instance and which I have held to be absolute and indefeasible as regards the suit land is the earlier grant and in the words of the Court of Appeal in *Wreck Enterprises vs Commissioner of Lands*, C.A No 71/1997 (unreported):- is the “grant [that] takes priority. The land is alienated already”.....Like equity keeps teaching us, the first in time prevails so that in the event such as this one where, by a mistake that is admitted, the Commissioner of Lands issues two titles in respect of the same parcel of land, then if both are apparently and on the face of them, issued regularly and procedurally without fraud save for the mistake, then the first in time must prevail. It must prevail because without cancellation of the original title, it retains its sanctity.”

43. I agree with the 1<sup>st</sup> Defendant’s submissions that the 1<sup>st</sup> Defendant’s title takes precedence over the suit property and that the actions to demolish the structures by the Plaintiff were lawful. The Plaintiff is therefore not entitled to the reliefs sought specifically, general and special damages.
44. Special damages must not only be pleaded but must be proved. I find that the Plaintiff has failed to prove that it is entitled to any special damages.
45. Having failed to prove that the 1<sup>st</sup> Defendant’s action of demolishing the structures amounted to trespass. As stated earlier in the Judgment, the parcel belongs to the 1<sup>st</sup> Defendant. The prayer for general damages for trespass must fail.
46. It is on record that the 1<sup>st</sup> Defendant issued a Letter of Demand dated 3<sup>rd</sup> November 2014 to the Plaintiff cease construction.
47. The upshot of the matter is that I find that the Plaintiff has failed to prove its case as against the Defendants on a balance of probabilities. The Plaintiff’s suit is hereby dismissed with costs to the 1<sup>st</sup> Defendant.

It is so ordered.

**DATED, SIGNED AND DELIVERED NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2022.**

.....

**L. KOMINGOI**



## **JUDGE**

### **In the presence of:-**

Ms Muturi advocate for the Plaintiff

Ms Anyango for Mr. Kipkorir advocate for the 1<sup>st</sup> Defendant

No appearance for the 2<sup>nd</sup> Defendant

Steve - Court Assistant

