



Mugechi v County Government of Nairobi & 2 others (Environment and Land Appeal 65 of 2010) [2022] KEELC 3408 (KLR) (15 June 2022) (Judgment)

Neutral citation: [2022] KEELC 3408 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL 65 OF 2010**

**BM EBOSO, J
JUNE 15, 2022**

BETWEEN

MARY MUGECHI PLAINTIFF

AND

COUNTY GOVERNMENT OF NAIROBI 1ST DEFENDANT

ROSE N. KINYANJUI 2ND DEFENDANT

BENSON N. MUCHIRI 3RD DEFENDANT

JUDGMENT

1. The dispute in this suit revolves around the question as to whether, in the year 2008, the plaintiff, Mary Mugechi, ceased to be the lawful proprietor of an unsurveyed and untitled piece of land designated by the City Council of Nairobi as Umoja Innercore Plot Number B. 59 Sector. The City Council first allocated the said plot to one Joyce Wanjiru in 1978. Joyce Wanjiru subsequently sold the plot to one Mary T Muthoni who in 1993 sold and transferred the plot to the plaintiff. The three successful proprietors entered into deed of assignment with the City Council. It is contended that the City Council repossessed the plot from Mary Mugechi in 2008 and reallocated it to one Nicholas Mbevu who immediately sold it to the 2nd and 3rd defendants. The 2nd and 3rd defendants' entry into the said plot is what triggered this suit.
2. Through a plaint dated 19/2/2010 the plaintiff sought the following reliefs against the defendant:
 - (a) A declaration order that the plaintiff has proprietary rights and is the lawful owner of the plot pursuant to the assignment of 29/10/1993.
 - (b) A mandatory injunction directed at the 1st defendant to reaffirm and register the plaintiff's interest in the land comprised in Umoja Innercore Plot Number B59 Sector 3 and to process



the issuance of a title deed in her name within such period as shall be determined by this honorable court.

- (c) A mandatory injunction directed at the 2nd and 3rd defendants compelling them, their agents, servants and employees to cease construction upon and occupation of the land comprised in Umoja Innercore Plot Number B59 Sector 3, and vacate the same forthwith.
- (d) A permanent injunction restraining the defendants or any of them, by themselves, their agents, servants or employees from disposing, dealing in, entering upon, digging on, excavating, fencing and erecting any structure upon the land comprised in Umoja Innercore Plot Number B59 Sector 3 and in any way whatsoever interfering with and disrupting the plaintiff, her agents or servants from enjoying quiet possession of the plot.
- (e) A mandatory injunction compelling the 1st defendant to ensure and supervise the demolition of any structure that has been erected upon the land comprised in Umoja Innercore Plot Number B59 Sector 3 by the 2nd and 3rd defendants, their agents, servants, employees such demolition to be carried on as directed by and within the period set by this honorable court.
- (f) A mandatory injunction compelling the 2nd and 3rd defendants jointly and severally to ensure and supervise the demolition of any structure that has been erected upon the land comprised in Umoja Innercore Plot Number B59 Sector 3 by themselves, their agents, servants or employees, such demolition to be carried on as directed by and within the period set by this honorable court.
- (g) An order of eviction permitting the plaintiff to evict the 2nd and 3rd defendants their agents, servants or employees from the land comprised in Umoja Innercore Plot Number B59 Sector 3 and comprised to demolish any structure that may have been erected thereupon without her consent.
- (h) An order directing the commissioner of police or the officer commanding the police station under whose jurisdiction the land comprised in Umoja Innercore Plot Number B59 Sector 3 falls, to assist in the compliance of the orders of this court to ensure that there shall be no breach of the peace.
- (i) The costs of this suit shall be awarded to the plaintiff against the defendants jointly and severally.
- (j) Any other orders it deems mete and just

3. Plaintiff's Case

4. Besides the plaint dated 19/2/2010, the plaintiff filed a witness statement dated 9/12/2011. She testified as PW1 and produced a bundle dated 9/12/2011 containing 9 documents. She filed written submission dated 17/1/2022. In summary, her case is that she acquired the suit property from Mary J. Muthoni Muchoki in October 1993. She took possession upon acquisition of the property. At the time of acquiring the suit property all requisite sums payable to the City Council were paid.

5. It is her case that vide a memo dated 20/3/1992, the council's Umoja office confirmed to the chief counsel (conveyancing) that the cost of the plot had been paid in full. Further, vide a memo dated 26/10/1993 from the Director of Housing Development to the Director of City Planning, the council confirmed that the purchase price, ground rent, rates and development charges in respect of the plot had been paid by her in full.



6. The plaintiff contends that she duly lodged her development plans with the council for approval. She continued to pay the annual rates. In the year 2010, she learnt of the presence of some trespassers on the suit property claiming ownership of the suit property. Efforts to establish

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 15TH DAY OF JUNE 2022

B M EBOSO

JUDGE

In the Presence of: -

..... for the Plaintiff

..... for the Defendants

Court Assistant: Ms Lucy Muthoni

