



**Karanja (Suing through his power of attorney Harry Karanja) v Ombati & another (Environment & Land Case E 007 of 2020) [2022] KEELC 15667 (KLR) (30 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 15667 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E 007 OF 2020  
OA ANGOTE, J  
SEPTEMBER 30, 2022**

**BETWEEN**

**ANTHONY KAIRU KARANJA ..... PLAINTIFF  
SUING THROUGH HIS POWER OF ATTORNEY HARRY KARANJA**

**AND**

**JOEL OMBATI ..... 1<sup>ST</sup> DEFENDANT  
RUII HILLSVIEW SCHOOL LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. In the amended plaint dated February 8, 2021, the plaintiff's attorney has averred that the plaintiff is the lawful owner and registered proprietor of land known as Nairobi Block 136/10074 located in Ruia Nairobi (the suit property) on which the defendant has trespassed upon.
2. According to the plaintiff's attorney, the plaintiff purchased the suit property on August 9, 1995 from Charles Ndung'u in Embakasi Ranching Company Limited, a land buying company and that after the purchase of the suit property, the plaintiff was issued with a share certificate number 891 by the ranching company.
3. It is the plaintiff's case that after the 1<sup>st</sup> defendant purported to buy the suit property from an artisan who worked for one of the Directors of Embakasi Ranching Company Limited, he entered the suit property without his permission and that as a result of the unlawful occupation of the suit property by the 1<sup>st</sup> defendant, he was unable to identify the suit property for purposes of taking possession.
4. According to the plaintiff, in the year 2013, the 1<sup>st</sup> and 2<sup>nd</sup> defendants occupied the suit property and converted it for use as the playground of a high school operated by the 2<sup>nd</sup> defendant and that despite lacking any verified documents was issued with a certificate of lease for the suit property thus depriving him of the land.



5. The plaintiff finally averred that a declaration should be issued that he is the registered proprietor of the suit property and for cancellation of title number Nairobi/Block 136/10074 issued to the 1<sup>st</sup> defendant and the suit property to be registered in his name.
6. The 1<sup>st</sup> defendant filed a defence in which he averred that he is the registered owner of the suit property; and that the parcels of land which he owns are numbers C1817, 1818, C 1819 and C 1820 in respect of which he was issued with certificates of leases bearing parcels number Nairobi/Block 136/40073, 10074, 10075 and 9905 respectively. According to the 1<sup>st</sup> defendant, the suit discloses no reasonable cause of action in law as it is scandalous and frivolous.
7. Although the 1<sup>st</sup> defendant was aware of the hearing date, he did not attend court. The plaintiff's witness testified on March 8, 2022. According to PW1, he is the son of the plaintiff and that in a meeting held in the company's offices, the 1<sup>st</sup> defendant claimed that a fundi sold to him several plots at Kshs 300,000 a piece around the year 2010 including the suit property.
8. In support of the plaintiff's claim that the plaintiff is the owner of the suit property, the plaintiff's agent, PW1, produced several documents including the Registry Index Map for Block 136 showing parcel number 10074, the sketch map showing the boundaries of the suit property and the list of members for issuance of leases from Embakasi Ranching Company Limited dated September 29, 2018.
9. In his submissions, the plaintiff's advocate submitted that the documentary evidence shows that the suit property was initially acquired from Embakasi Ranching Company Limited in 1982 and sold to the plaintiff in 1995 and that the 1<sup>st</sup> defendant relied on a non-member share certificate dated May 27, 2010 from Embakasi Ranching Company to show the root of his title.
10. Counsel submitted that the plaintiff had already been allocated the suit property; that the land was not available for allocation and the same land could not be allocated to the 1<sup>st</sup> defendant and that the lawful owner of the suit property is the plaintiff.
11. The plaintiff's counsel submitted that the root of the 1<sup>st</sup> defendant's title is doubtful and therefore the 1<sup>st</sup> defendant's certificate of lease is impeachable as the root of her title is questionable and that it is possible it was acquired unlawfully, illegally and unprocedurally. Counsel relied on numerous authorities which I have considered.

### **Analysis and findings**

12. It is trite that where a party fails to call evidence in support of its case, that party's pleadings remain mere statements of fact since in so doing, the party fails to substantiate its pleadings (see *Limus Nganga Kiongo v Town Council of Kikuyu*, HCCC No 79 of 2011). This position was earlier on reinstated by Madan JA in *CMC Aviation Ltd v Crusair Limited* (No 1) [1987] KLR 103 as follows;  

“The pleadings contain the averments of the three parties concerned. Until they are proved or disproved, or there is admission of them or any of them by the parties, they are not evidence and no decision could be founded on them. Proof is the foundation of evidence.”
13. The failure by the defendants to call evidence renders their statement of defence a mere statement, and has no evidentiary evidence. Despite the failure by the defendants to call evidence, the burden by the plaintiff to prove his case on a balance of probabilities remains the same.
14. To prove his case, the plaintiff's agent, PW1, produced in evidence a copy of share certificate number 914 dated November 17, 1982 issued to Chales Ndungu by Embakasi Ranching Company Limited.



This is the same person that sold the land then referred to as C1818 to the plaintiff vide an agreement dated April 26, 1983 which was also produced in evidence.

15. The evidence before the court shows that plot number C1818 was later designated as parcel number 10074 under Block 105.
16. To the extent that the plaintiff has shown that after purchasing a share from the previous owner of land that was designated as C1818, he was issued with a share certificate in his name on August 18, 1995, the said certificate refers to the same land, which is C1818.
17. Indeed, in the statement of defence, the 1<sup>st</sup> defendant acknowledged that plot number C1818 is the same land that was surveyed and renamed as Nairobi/Block 136/10074.
18. To the extent that the defendants have not shown the root of their title to Nairobi/Block 136/10074, and considering that the plaintiff has shown that the said land was allocated to him way back in 1995, it is the finding of this court that the land was not available for allocation to the defendants thereafter.
19. For those reasons, it is the finding of this court that the plaintiff has proved his case on a balance of probabilities.
20. The plaintiffs' suit is allowed as follows:-
  - a. A permanent injunction be and is hereby issued restraining the defendants, their servants, workman, agents or customers from entering, trespassing, demolishing, taking possession, damaging, alienating, allocating or in any other way whatsoever interfering with the suit property known as Nairobi/Block 136/10074.
  - b. Certificate of Lease for Nairobi/Block 136/10074 issued to the 1<sup>st</sup> defendant be and is hereby cancelled.
  - c. The plaintiff to be registered as the bona fide owner of land known as Nairobi/Block 136/10074.
  - d. The 1<sup>st</sup> defendant to pay the costs of the suit.

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

**O. A. ANGOTE**

**JUDGE**

In the presence of:

Mr. Karanja for the Plaintiff

No appearance for the Defendants

Court Assistant - June

