



1. Land and Environment Law Division
2. Subject of main suit:- Land L.R 209/7260/9 (i) City Council of Nairobi Double allocation of land (ii) Admission of facts by parties:- a) City Council of Nairobi Advocates it issued a letter of attachment to two original allocates John Mwangi Kingori – 13.12.95 and Michael Mwangi Wanjohi 13.12.95 held to yourself28 April, 2003 respectively (iii) City Council advocates obtaining stand premise from list parties (iv) Who is the urgent owner?
3. Plaintiff case they had records of deliberation of suit property. Defendants case the defendant claim urgent owner.
4. Held. The plaintiff urgent owner
5. case law

a) pursuance

b) Gitwang Investement Limited V Jajmal Ltd & 20 Others

HCC 1114/2004 (2006) KLR

c) Kenya anti commission V Betty Alison

Chebet Kipsata & Anster

HCC Misc Application 27/07

(2007) EKLR

6. Advocate

a) E.W Nderitu instated by M/s Kamotho mayo and mbatia advocates

advocate for 2nd defendant

b) E.M Njiru instead by Alimidnasir Abdikader and Co Advocates advocate

for 1st defendant

c) L W Kyama M/s Kamotho Maingi and Mtatia Co Advocates advocate for

plaintiff

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE 696 OF 2003

DAVID KINYANJUI KARINGACHA & 2 OTHERS....APPLICANT

VERSUS

YUSUF IBRAHIM ISMALL & ANOTHER.....RESPONDENT

JUDGEMENT

Background

City Council of Nairobi have a mandate as a Israel Authority Government to issue letters of appointment for land. On the 13 December, 1993 a letter of appointment was issued to one John Mwangi Kingori (former Mayor) ref 1013/5/26/098 LR 209/7260 Part....plot No 9 0.025 Hectares (approximately) user:- residential development in accordance with approved plans. On the same day of 13 December, 1995 another letter of appointment was also issued to one Michael Mwangi Wanjohi Ref LU1013/5/26054 LR 209/7260 Part plot No 9 0.025 Hectares (approximately user:- Residential development in accordance with approved plans.

The case before me is one of double allocation by the City Council of Nairobi for the same plot No 9. this double allocation was not discovered immediately until interfere on the said piece of plot was noted by the buyers.

1. John Mwangi Kingori is alleged to have sold the plot to M/s Mweteta Wazee self help group and the City Council of Nairobi did issue a letter of appointment to them on 21 January, 1997.

2. Michael Mwangi Wanjohi sold his property allegedly plot No 9 to yourself Ibrahim Ishmael and was accordly issued with a letter of appointment dated 28 April, 2003. He enhanced to work on the land. The Mweteta Wazee self help group filed this suit with orders of injuncion to obtain him.

3. The issue before the court is whom out of the two are urgentiful owners of the said suit land? II
Section of Admission

4. Before the trial commenced for hearing, the city council of Nairobi (represented to as the 2nd defendant) made admission that it involved in issuing the thus letters of appointment. They wanted this court to determine who in anywas the urgentiful owener of the suit land.

5. The parties entered into an admission of facts that need not be pursued during the trial, namely

7.1 (It is hereby admitted by the parties) That the 2nd defendant admits it issued a laetter of appointment to John Mwangi Kingori dated 13 December, 1995 and to Michael Mwangi Wanjohi dated 13 December, 1995.

7.2 The second defendant admits it issued a letter of appointment to Mweteta Wazee self help group on 21 January, 1997.

7.3 The second defendant admits it issued a defendant of appointment to Yusuf Ibrahim Ishmael on 28 April, 2003

7.4 The second defendant admits receipt of Kshs. 42,166/= very stand preliminary and government flow plaintiff on 20 February 1997

7.5 The second defendant admits receipt of Kshs. 56,1661/= being stand plains and government from Michael Mwangi Wanjohi on 14 April, 2003 was sold to the first defendant.

7.6 The parties herein do not dispute the sale agreements as between the respective allocates herein

about to the plaintiffs and 1st defendant and all other documents as per their respective bundles of documents in support of the case.

III Trial

8. PWI is an officer of the plaintiff organization he gave evidence confirming that the city council did issue a letter of appointment to them on 21 January, 1997 how the ...of the organization there was a delay in obtaining title flow the city council of Nairobi though the control of lands.

9. DWI stated he sought the land flow the urgentifful owner DW2 the ought person so allocated to confined this on cross examination be admitted he took several years to pay for the plot. He had no finances. He sold the property and moved to Rongai

IV Opinion

10 I was refereed to the case law herein of Gitway Investment Ltd V Jajma Company Ltd & 2 Others HCC1/14/2004 (2006) KLR Ransley Judge where there is a double allocation the first one in time is the court allocation

11 This decision is permitted this not binding upon me. I witnessed note the principles followed of the first allocated in time should be the urgentifful owner.

12. The Other case referred to me is that of Kenya Self Group V Bettly Abison Chlid Kepsatat & Another

13. In which failure to pay sums within 30 days was ground to vendor the letter of allocation void

14. December, 1995 the defence with this documents are in the reference number.

The first being reference:- 10/13/5/26/054 for defendant/Sought owner and ref 1013/5/26/098 for the plaintiff ought owner.

15. In evidence, the 1st defendant seller admitted that it took in many years to effect the sale of the property and to pay the plaintiff with 30 days. He had no finds it seems to do this no plaintiff was paid and technically the letter of allocation ought to have been and is void 5. The plaintiffs on the other hand immediately obtained a letter of allocation on 21 January, 1998 with the 1st defendant in the year 2003.

16. It us done to the disiplinary of this allocation letters that the lands department declined to issue a title deed.

17. I am of the opinion that the plaintiff on being allocated the suit land they outlined them allocation letter. They amended only the title. This was delayed grandly due to government policy not to issue by more titles.

18. I find that the plaintiffs are the urgently owner and acted diligently in this matter.

They were first in being issued the letter by the 2nd respondent to them through their respective sellers. The title deed contificate at this at age had been issued and one would have considered the reference number issuing the allocation letter.

That of the 1st defendants seller is 054 and that of the plaintiffs seller is 0.98 at this particular function the issue of payment of the requisite presents within 30 days....required. the 1st defendant's seller most certainly did not pay this premises.

The reasons being that he was unable to pay t he person for several years. Plaintiff were paid for the

plaintiffs seller or else letters of allocation would not have been issued to them in the year 1997.

19. It was therefore clear that the next step was the payment of the previous. The 1st defendant's allocated letter had no previous paid. The city council should have officially cancelled the allocation letter. They failed to do so. The timing to my mind thereafter of the payment of the previous becomes the next factor to determine who is first to be issued with the letter of attachments. The plaintiff's seller letter of attachment was paid and they were issued with their letter in the year 1997. That of the 1st defendant seller was made in the year 200.

20. The 1st defendant filed a counter claim purporting that the plaintiffs letter of attachment was obtained by fraud. The 2nd defendant has admitted that both letters of attachment are game and valid. There was no fraud on the part of both persons on the letters of attachment. It was a game mistake.

21. Following therefore the principles that the person was first registered would be theowner of the suit premises I would add that as the city council of Nairobi are the owner issuing the letter of attachment to be transmitted to the commercial of lands the said city council must first investigate their allocation letters with their seconds to eliminate any fraud . in this case they have and state a given mistake had been made. The principal to be followed to the letter that was first issued. I must point out that the seller for the 1st defendant letter of allocation is not ought. The second page is land there is no explanation as to where the ought letter of allocation went to. I nonetheless base my findings on the principles that the Bona fide owner of the suit premise is one who is issued first with the letter of allocation. If we take on facethat the letter of allocation was first paid for.

In this mistake premises was paid for in 1997 by the plaintiffs. The defendant No 1 seller havingpay his premises his title sought to have been cancelled but was not instead a.....of allocation was issued in 2003. the court hereby confirms that the plaintiffs were first in the issue of the title.

II Counter Claim

22. My findings on the counter-claim is that there has been no fraud found. The advocate for the 1st defendant tried to prove that the plaintiff's letter of allocation was not signed. This letter was certified as active copy of the ought and counter argued by the Town Clerk sometime in November, 1996. The 2nd defendant admits the letter of allocation is given.

23. I find that there was no fraud or the paint of the plaintiffs on being issued with the letter of allocation . the same is accessibly dismissed with costs to the plaintiffs.

IV Conclusion

24. I enter judgment for the plaintiffs and declare that they are the urgntifly owners of the suit premises LR 209/7260 Plot No 9 with costs to the plaintiffs to be paid by the 1 & 2 defendant

25. I dismiss the counter claim on fraud filed by the 1st defendant against the plaintiffs with costs to the plaintiffs to be paid by 1st defendant.

26 That the 2nd defendant is to refund the premises paid on the letter of attachment by the 1st defendant if any

Dated this 17th day of April, 2008 at Nairobi

M ANG'AWA

JUDGE