



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 5425 of 1992

ANN WANJUNU.....PLAINTIFF

VERSUS

MWIHAKI WARUIRU & 2 OTHERS.....DEFENDANTS

JUDGMENT

The Plaintiff filed this suit by way of a Plaint against the 3 Defendants on 25th September 1992 and amended on 28th March 2000 seeking judgment against the Defendants jointly and severally in the following terms:

- (a) That the Plaintiff's title to Land reference RUIRU/RUIRU – E BLOCK 2/4785 is the legitimate title and the same is indefeasible against the 1st defendant or anyone claiming under her.
- (b) That an injunction do issue against the 1st Defendant restraining her, her servants, agents and or anybody claiming through her or them from trespassing, occupying, constructing and/or in any other way laying claim to the Plaintiff's title LR NO. RUIRU/RUIRU – E/BLOCK 2/4785.
- (c)
 - (i) General damages for trespass
 - (ii) Exemplary damages for trespass.
 - (iii) An order directing the 2nd Defendant to call for and cancel the title issued to the 1st Defendant
 - (iv) A declaration that the 1st Defendant purported title LR NO. RUIRU/RUIRU/BLOCK 2/4785 is illegal, null and void
 - (v) A mandatory injunction directed to the 1st Defendant to demolish the structures already erected on LR RUIRU/RUIRU E-/BLOCK 2/4785 and to vacate from the said land forthwith.
- (d) Costs of this suit together with interest.
- (e) Any other or such or such further relief as this Honourable court may deem fit to grant

The dispute over the suit land is between the Plaintiff and the 1st Defendant, each claiming to have a genuine title to the suit land. The 2nd Defendant is sued in his capacity as the officer who issued the title

deeds at the Thika District Land Registry, while the 3rd Defendant is sued in its capacity as the company which allocated land to its shareholders the land the subject matter of this suit being one of those it allocated.

The Plaintiff in her evidence testified that on 13th November 1985 she entered into a sale agreement with Mr. and Mrs. Njatha Wabaru to purchase their shares in the Nyakinyua Investment Ltd. The Sale Agreement was in the following terms:

This is to confirm that we Mr. and Mrs. Njatha Wabaru of P.O. Box 75195 Nairobi, we have sold our (100) one hundred shares in Nyakinyua Investment Ltd as shown on the share certificate No.04618 to Mrs. Anne Wanjunu Waithaka Ndegwa of P.O. Box 70160 Nairobi.

We have shown her the Plot 6A on the ground and have given her the following documents:-

1. Copy of the Share Certificate No.04618
2. The Original Ballot No.6A

Signed this 13th day of November 1985.

Mr. S. Njatha Wabaru Signed

Mr. Lucy Wanjiru Njatha Signed

Mrs. Anne W.W. Ndegwa Signed

Mr. Duncan Waithaka Ndegwa Signed

On receipt of the two documents above she returned the share certificate to the 3rd Defendant and she was issued with one in her name. She was issued with title to the suit land LR. NO. RUIRU/RUIRU – E/BLOCK 2/4785 on 26th August 1988. But in 1992 when she sent her workers to the suit land with materials to erect a fence round the plot, they were arrested by the Police and the materials confiscated. When she went to find out from the police why her workers were arrested she was informed that the land belonged to someone else. She produced the title before the police who after scrutinizing the same, released her workers and advised them to go to court to settle their dispute. She filed this suit seeking prayers as contained in the plaint plus costs of the suit.

The Plaintiff called one witness Duncan Waithaka Ndegwa her husband who is a Land Surveyor who testified that as a surveyor in the course of his duties, he came to know the suit land which belonged to one Lucy Wanjiru Njatha whose husband is also a

Surveyor and they had known each other before. He also became aware that the said Lucy W. Njatha was looking for a buyer to purchase her said land. They negotiated the purchase price, paid for it and the said Lucy W. Njatha surrendered the share certificate which was for 100 shares to the Plaintiff.

The 1st Defendant Anne Mwhiki Waruiru in her evidence testified that she became a share holder of the 3rd Defendant on 10th November 1976. Nyakinyua Investment Ltd is a Land buying company and had purchased land for its members. She was member No.4785 and balloted under Ballot No.6A and she was issued with share certificate No. 4785. She called 3 witnesses JOHN GITONGA GICHOHI, (DW2) who is the District Land Registrar, Thika who testified that among his duties is to issue titles and keep a register for the title deed holders in the District. The office has a register for the shareholders of Nyakinyua Land Buying Co. Ltd and the name of the Plaintiff does not appear in that register as one of the shareholders but the name of the 1st Defendant appear there. He further testified that each land buying company keeps 3 registers, one at the Lands Office, another at the District Officer's Office and the 3rd remains with the company. NDUTA NDIRANGU (DW3) testified that she is the chairlady of the 3rd

Defendant, Nyakinyua Investment co. Ltd and that she has been a director of the company since 1989. She stated that the 1st Defendant became a member and shareholder since 1976 and that she balloted for a plot and she was successful and she was given one unsurveyed plot which was later registered as LR NO. RUIRU/RUIRU EAST/BLOCK 2/4785. The other witness is KIMANI GITHONGO (DW4) who testified that he is an advocate of the High Court of Kenya

e is the company Secretary of the 3rd Defendant. One of his duties is keeping the records of the company.

In that capacity he has in his custody the register of the plot allocation by the company to its members.

In respect of the suit premises LR NO. RUIRU/RUIRU EAST/BLOCK 2/4785, allocation is to be found in the register Volume 2 and the name of the owner is indicated as ANNAH MWIHAKI WARUIRU ID NO. 101801464 – Ballot NO.6A – Certificate No. 2767 Parcel NO. 4785 and she comes from Ndaragu Location (D Exh.10).

On cross-examination he stated that some of the title deeds had fallen into the hands of non-shareholders but the same were recalled and cancelled. He also produced the shareholders register which contained all the shareholders and their respective share certificates D-Exh.11.

From the evidence before me, I am satisfied that the suit premises belongs to the 1st Defendant. I would have stopped there but I will go further than this. The Plaintiff claims to have purchased 100 shares from Mr. and Mrs. Njatha Wabaru. This being an interest in land compliance with the provisions of Section 6 of the Land Control Act Cap 302 is a must which provides:-

“6(1) Each of the following transactions:

- (a) the sale, transfer, lease, mortgage, exchange, partition, or other disposal of or dealing with any agricultural land which is situated within a land control area;
- (b) the division of such agricultural land into two or more parcels to be held under separate titles, other than the division of area less than 20 acres into plots in an area to which the Development and use of Land Planning Regulations 1961 for the time being apply;
- (c) the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land situated within a land control area; is void for all purposes unless the Land Control Board for the land control area or division which the land is situated has given its consent in respect of that transaction in accordance with this Act.

Section 7 of the Act provides that if any money or other valuable consideration has been paid in the course of a controlled transaction that becomes void under this Act, that money or consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid.

The consideration paid by the Plaintiff to Mr. & Mrs. Njatha Wabaru is recoverable as civil debt.

For the reasons stated above the Plaintiff's suit is dismissed with costs.

Dated and delivered at Nairobi this 19th July 2007.

J.L.A. OSIEMO

JUDGE