

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 2240 of 2001

GRACE WAMUYUPLAINTIFF

VERSUS

CAPTAIN MUYAADEFENDANT

JUDGEMENT

This suit involves the ownership of a plot in the Kitengela which the Plaintiff says is Plot No.46 Noonkopir Trading Centre. The Defendant says it is Plot No.455. the parties however both claim the said plot (hereinafter called the Plot).

The Plaintiff claims in respect of the plot a declaration that the Defendant is not to enter or use the same and an injunction barring him from doing so. There is a further claim that the Defendant remove a septic tank which he has built on the Plot.

The evidence in the case is conflicting PW1 who gave evidence when the case was part heard by Githinji J (as then was) being the District Physical Planner Kajiado who referred to a letter written by Moses Senera for the clerk to the Ol Kejuado county council of the 30.10.2001, which asked him to prepare a part development plan for a number of plots including Plot No.46 allotted to Grace W. Maina the Plaintiff. He prepared a plan which was duly gazetted. It did not go for approval because after it was circulated the Council wrote saying there was a dispute.

The Plaintiff produced a letter of allotment in her possession for Plot 46 from the council as well as a transfer in respect of Plot 46 from Mrs. Konchella to the Plaintiff and her late husband before his death. Also a letter written by Mr. Semera to the Defendant of the 15.10.2001 saying he had encroached into the Plot. She also produced a letter of the 21.11.2001 from Mr. Semera to the Plaintiff complaining that she had demolished a fence erected by the Defendant and telling her to stop until the 27.11.2001 when the County Surveyor Mr. Kasuku would visit the site and reconfirm the position. Mr. Semera gave evidence and said that he believed the second surveyor Mr. Risando had made a mistake as Plot 46 had already been allocated to the Plaintiff.

The Defendant gave evidence and stated that plot 455 was owned by a Mr. Manuve who exchanged the plot for Plot No.117 owned by the Defendant as Plot 455 was next to another plot owned by the Plaintiff being Plot 385 which he had developed. He took possession of plot 455 and started to develop it by putting a septic tank there. Mr. Risando was called and it was his evidence that Plot 455 was the one on which the septic tanks were built.

The question for determination is who is the true owner of the plot and what is the correct number. Is it plot 46 or plot 455.

Having heard the evidence I am satisfied on a balance of probabilities that the plot is Plot 46 which belongs to the Plaintiff and that Plot No.455 is not adjacent to Plot 385 owned by the Defendant.

I do so because Plot 46 was allotted to the Plaintiff in the first place and the District Physical Planner accepted that Plot 46 was where the Defendant claims that Plot 455 is. The dispute which arose was

because the Defendant was claiming to be the owner of the Plot. However, it appears that he was not correct in saying that the Plot next to his plot was 455.

In the result I order in terms of prayers (a) (b). Prayer (d) is for mesne profits of Kshs.3,000/= per month, these are in the nature of special damages and no particulars were pleaded. This claim is dismissed. Also I dismiss a claim for damages for trespass claimed in prayer (e) as there was a genuine mistake as to who the owner of the Plot was. The Plaintiff will have the costs.

Dated and delivered at Nairobi this 25th day of May, 2006.

P. J. RANSLEY

JUDGE