

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
HIGH COURT CIVIL CASE NO. 233 OF 1995

SIMON NDEGWA CHEGE.....PLAINTIFF

V E R S U S

EMBAKASI RANCHING CO. LTD.

AND ANOTHER.....DEFENDANTS

J U D G M E N T

The 1st Defendant is a ranching company. It owns farms within Embakasi area, Nairobi, one of which is L.R. NO. 10904/2, off Komarock Road. The Plaintiff is now deceased. Simon Ndegwa, Charity Wambui Ndegwa and James Chege Ndegwa have been substituted in his place. They are the joint administrators of his estate. The Deceased was a shareholder of the 1st Defendant. The 1st Defendant surveyed and subdivided the said L.R. NO. 10904/2 into several plots for allocation to its shareholders. One of those plots, which is the subject of this suit was allocated to the Deceased in 1982. I will be referring to that plot as "the suit land." The Deceased paid the necessary fees for the issuance of a title deed over the suit land to him way back in 1984, but none had been issued to him as at the time of his death. The same has not been issued to his administrators either. On 26th March, 1994, the Deceased visited the suit land with a view to arrange for its development. He found that it had been fenced and was being used by the 2nd Defendant. He enquired at the offices of the 1st Defendant who sent their surveyor to the suit land: It was established that the same had been occupied by the 2nd Defendant. The 1st Defendant did not assist the Deceased to recover the suit land but offered him another plot instead. It appears that the 2nd Defendant had bought the suit land from a third party through the 1st Defendant's office. The Deceased brought this suit seeking his restoration in the suit premises and the eviction of the 2nd Defendant. It was also claimed as follows:-

- (a) That a permanent injunction be issued to restrain the 1st Defendant from transferring the suit land to the 2nd Defendant; and
- (b) general damages for wrongful and illegal use of the suit land by the 2nd Defendant.

At the hearing, it was not disputed that the only question for determination was the assessment of damages if any and who, between the 1st and 2nd Defendants was liable therefor. This was on the basis that the Plaintiff had subsequently agreed to accept an alternative plot. This was an agreement that the parties themselves had reached. Mrs. Charity Wambui Ndegwa, the Deceased's widow, testified that it had been intended to construct a residential building and other rental houses on the suit land. She said that the irregular allocation of the suit land to the 2nd Defendant denied her family an opportunity to build the residential building forcing them to obtain alternative accommodation at a cost. However, her testimony did not satisfy me, on a balance of probability, that the irregular allocation had indeed caused them the loss stated. She could not prove that they had the funds to build a residential building on the suit land as she alleged. That aside, the evidence as a whole shows that the 2nd Defendant was an innocent purchaser for value without notice of any irregularity. It is, therefore, not possible to hold him liable for any loss suffered by the Plaintiff. The suit against him must and is hereby dismissed with costs. However, it is apparent that the 1st Defendant was reckless in allocating the suit land to another person when it had already allocated it to the Plaintiff. The reason advanced for allowing the 2nd Defendant to stay on the suit land, that is that he was a victim of the notorious tribal clashes is flimsy and irrelevant. It is not in dispute that the suit land carried with it some advantage that will not be obtained from the alternative plot allocated to the Plaintiff. Although the Plaintiff has suffered no actual loss, there can be no doubt that he must have been put to some inconvenience due to the 1st Defendant's conduct. This court is, therefore, of the view that the Plaintiff is entitled to nominal damages which are assessed at K.shs. 50,000/=. The

Plaintiff shall also have the costs of this suit against the 1st Defendant.

DATED and DELIVERED at NAIROBI this 10th day of May, 2001.

ALNASHIR VISRAM

JUDGE.