



**Nduati v Kariuki (Environment and Land Case Civil Suit  
984 of 2015) [2025] KEELC 1094 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1094 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 984 OF 2015**

**OA ANGOTE, J  
MARCH 6, 2025**

**BETWEEN**

**DANIEL KAMAU NDUATI ..... PLAINTIFF**

**AND**

**ALICE MUMBI KARIUKI ..... DEFENDANT**

**JUDGMENT**

1. Vide a Plaint [undated] filed on the 8<sup>th</sup> October, 2015, the Plaintiff seeks as against the Defendant the following reliefs:
  - i. A declaration that the Plaintiff is the sole and absolute owner of the property known as Plot No 164-Komarock Bridge Jua Kali Residential cum Commercial Plots Dandora Phase 1(hereinafter referred to as the property) and hence entitled to quiet, peaceful and un-interrupted possession of the same.
  - ii. A permanent injunction restraining the Defendant by herself, her servants, agents and/ or employees from entering or building any structure or continuing with any building or construction on the property plots known as Plot No 164- Komarock Bridge Jua Kali Residential cum Commercial Plots Dandora Phase 1.
  - iii. A mandatory order of injunction be issued to compel the Defendant, her servant, agent and/ or employees or any person in occupation to immediately remove all the unfinished structures and building materials on the property within such time as the Honourable Court shall deem fit and in default the Plaintiff be at liberty to do so.
  - iv. Any other verdict that this Honourable Court may deem fit and just to grant.
  - v. Costs of the suit.



2. It is the Plaintiff's case that he is the legitimate proprietor of all that property known as Plot No 164, Komarock Bridge, Jua Kali Residential cum Commercial Plots, Dandora Phase 1 (hereinafter the suit property); that the Defendant has trespassed onto the suit property and has started putting up structures thereon claiming she has a right to do so and that the Defendant's actions are manifestly illegal and constitute a breach of his right to property.
3. The Defendant filed a Defence and Counterclaim on 18<sup>th</sup> November, 2015. She denied the assertions as set out in the Plaint stating that she is the rightful owner of the suit property having purchased the same in 2011 from one Adrine Wanjiru Gachuhi alias Maina, its original allottee, for the sum of Kshs 230,000 and that the property was subsequently allotted to her by the Komarock Bridge Jua Kali Association.
4. According to the Defendant, neither the Plaintiff's name nor the person he alleges to have purchased the property from appears on the list of plot beneficiaries and is a stranger to the entire allocation process and that in 2011, after a vetting process, a joint technical team of the Komarock Bridge recommended that she be registered as the owner of the suit property.
5. It was averred by the Defendant that the Plaintiff has persistently harassed her in a bid to dispose her of the property and even went as far as reporting the matter to the police and that upon investigations, the police concluded that there was no criminal offence and the matter should be pursued in civil court. The Defendant seeks vide the Counterclaim for the following reliefs:
  - i. A declaration that the Defendant is the rightful owner of Plot Number 164-Komarock Bridge Jua Kali Residential Cum commercial plots, Dandora Phase 1.
  - ii. Costs of this suit together with interest thereon at court rates.
  - iii. Such other of further relief that this Honourable Court may deem just and fit to grant.

### **Hearing and Evidence**

6. The matter proceeded for hearing on the 27<sup>th</sup> October, 2021. The Plaintiff, as PW1, adopted his witness statement dated 8<sup>th</sup> October, 2015 as his evidence in chief and produced the bundle of documents of an even date as PEXHB1.
7. It was his evidence that he is the legitimate proprietor of the suit property having been allocated the same by the then Nairobi City Council; that he was issued with a beacon certificate; that he has paid all the requisite fees and is paying ground rent to the Nairobi City County; that the Defendant has without any colour of right invaded his plot and has started developing it and that he reported the matter to the police and area chief but the Defendant is adamant that she is entitled to the property.
8. During cross-examination, he stated that the letter of allotment is in the name of Racheal Kamau Wambui, his daughter, who was initially allotted the suit property; that he was given possession of the land but someone else took it over; that he reported the matter to the police station but has no documents showing the same; that the beacon certificate was given to him on the same day the suit property was allotted to Rachael and that he paid the application fee; survey fees and for the beacon certificate.
9. It was his further evidence on cross-examination that the receipts dated the 16<sup>th</sup> July, 2014 and 13<sup>th</sup> March, 2015 read "David" while his name is Daniel and that the receipt dated 27<sup>th</sup> March, 2015 shows the name Rachael.
10. In re-examination, PW1 stated that the land was allocated to his daughter Racheal who transferred the same to him because she was leaving the country; that before it was allocated to his daughter, it



belonged to the City Council; that he was shown the plot by the County Surveyor after making an application for survey and paying Kshs 1000; that the name David indicated on the receipt was an error; that the beacon certificate was signed on 14<sup>th</sup> April, 2014 and that plot 164 Dandora is the same as plot 164 Komarock.

11. The Defendant, DW1, adopted her statement dated 14<sup>th</sup> September, 2021 as her evidence in chief and produced the documents dated 9<sup>th</sup> November, 2021 as DEXB1 [Except document no 3].
12. It was her evidence that on 11<sup>th</sup> September, 2001, she purchased the suit property from Adrine Wanjiru Gachuhi, the property's original allottee; that the property was subsequently allotted to her by Komarock Bridge Jua Kali Residents Association vide a letter of allotment dated 21<sup>st</sup> September, 2001 and that after she was allotted the property, she begun development thereon and constructed a perimeter fence.
13. It was her evidence that the Plaintiff does not appear in the list of beneficiaries in Komarock Bridge Jua Kali; that despite having no claim over the suit property, the Plaintiff persists in attempting to disposes her of the same; that he reported the matter to the police who upon investigation found that there was no criminal culpability on her part and advised him to pursue the matter in a civil court and that the technical team of Komarock Bridge Jua Kali carried out fresh vetting and recommended that she be registered as the owner of the suit property.
14. She urged that the Plaintiff has not demonstrated that he was the original allottee of the suit property and that he has further not proven how he acquired the suit property from its first purported allottee.
15. In cross-examination, DW1 stated that she does not know if Benson who witnessed the agreement between her and Adrine Wanjiru worked for the Nairobi City Council; that she was not the owner of the property in the year 2000; that she paid for the survey fees but does not have the receipt; that she does not have a beacon certificate and that Ms Wanjiru only gave her the allotment card and not the letter of allotment issued to her.
16. DW2 was Benson Gachuhi, a retired citizen and private school owner in Kayole. He adopted his witness statement dated 13<sup>th</sup> September, 2021 as his evidence in chief. It was his evidence that on 11<sup>th</sup> September, 2001, he witnessed the sale and purchase of the suit property from Adrine Wanjiru, who was the property's original allottee to the Defendant; that the plot was thereafter allotted to the Defendant by Komarock Bridge Jua Kali Association and that unfortunately, his wife has since passed on.
17. DW2 stated that he is aware that the Plaintiff has persistently harassed the Defendant in a bid to disposes her of the suit property; that the Plaintiff reported the matter to the police but they found no criminal culpability on the part of the Defendant and that the Plaintiff's claims that he was the original owner of the suit property are blatantly misleading because his documentary evidence gives a contrary picture.
18. It was his evidence on cross-examination that he worked at the housing department of the Nairobi City Council at the time of the sale of the suit property; that he witnessed the agreement and his signature is on the card as the Assistant Director Community Development; that he cannot authenticate the list of beneficiaries produced by the Defendant and that he no longer works at the County.
19. It was his further evidence on cross-examination that ordinarily, a list would be forwarded to the Town Clerk for approval and relying on the list presented, the Town clerk would issue letters of allotment; that the card in the Defendant's list was supposed to be processed by the Division and to be signed by the Assistant Director and the Director; that the card does not show the person who prepared it and



is not dated; that after an agreement, the card was to be returned and a fresh card would be released to the buyer and that thereafter, the Town Clerk would issue a letter of allotment.

20. It was his evidence during re-examination that his wife did not have a letter of allotment but a card; that the letter of allotment would follow after the card was issued and that the card would be issued with concurrence with the list approved by the Town clerk.

### **Submissions**

21. The Plaintiff filed submissions on 14<sup>th</sup> August, 2024. Counsel submitted that from the evidence before the court, the only conclusion that can be drawn is that the Plaintiff is the legitimate proprietor of the suit property; that DW2, being an Assistant Director in the housing department of the Nairobi City Council engineered a sham transaction between his wife and the Defendant as evinced by the facts that she did not, just like the alleged original allottee, have a letter of allotment and that she only had an undated allotment card which did not bear the name of the person who presented it.
22. It was submitted that the list of beneficiaries was forwarded to the town clerk for approval on 28<sup>th</sup> May, 2001; that by this time, the allotment in favour of the Plaintiff had already been approved on the 12<sup>th</sup> January, 2000; that it is trite that one cannot sell what he does not own and that the correspondence from the DCI and DCIO Buruburu is irrelevant because it cannot confer ownership of land to the Defendant.
23. The Defendant filed submissions on 20<sup>th</sup> November, 2024. It was submitted that as between the Plaintiff and the Defendant, the Defendant has legitimately established her ownership of the suit property; that the Plaintiff failed to produce any instrument of transfer from the alleged original allottee to himself or any consideration for the same and that the receipts alluded to show payments done approximately 14-15 years after the alleged allotment and a number of them have different names other than that of the Plaintiff.
24. It was submitted that despite alleging fraud by the Defendant, the same was not proven to the requisite standard and that as expressed in *Lucy Nchebeere vs Rose Ndululu Musee & Another* [2021] eKLR, quoting the case of *Benson Wandera Okuku vs Israel Were Wakho* [2020] eKLR, allegations of fraud must be strictly proved.

### **Analysis and Determination**

25. Having carefully considered the pleadings, testimonies and submissions herein, the issue that arise for determination is who between the Plaintiff and the Defendant is the legitimate proprietor of the suit property?
26. The Plaintiff seeks, inter-alia, for a declaration that he is the legitimate proprietor of the suit property, permanent injunctive orders restraining the Defendant from interfering with the suit property, and mandatory injunctive orders directing the Defendant to remove all the unfinished structures and building material on the suit property.
27. It is the Plaintiff's case that he was allotted the suit property by the Nairobi City Council; that he paid all the requisite dues and is currently paying ground rent and that the Defendant has without any colour of right invaded his plot.
28. He adduced into evidence the letter of allotment dated 21<sup>st</sup> September, 2001, beacon certificate dated 21<sup>st</sup> September, 2001; receipts for application fees dated 16<sup>th</sup> July, 2014; survey fees receipt dated 13<sup>th</sup> March, 2015; beacon certificate fee dated 16<sup>th</sup> July, 2014 and ground rent receipt dated 27<sup>th</sup> March, 2015.



29. On her part, the Defendant, vide her counterclaim, seeks inter-alia for a declaration that she is the legitimate proprietor of the suit property. It is her case that she purchased the property from Adrine Wanjiru Gachuhi, the property's original allottee and was subsequently issued with a letter of allotment and that she thereafter took possession of the suit property and begun development thereon and constructed a perimeter fence.
30. She adduced into evidence the sale agreement between herself and Ms Adrine Wanjiru Gachuhi; allotment card; certified list of plot beneficiaries in Komarock Bridge Jua Kali Association; rates payment receipts dated 29<sup>th</sup> October, 2012 for stand premium and ground rent; letter from DCI dated 20<sup>th</sup> March, 2008 and D.O's letter dated 19<sup>th</sup> March, 2011.
31. Considering the above narration, it is evident that this is a dispute involving two parties, each asserting ownership over the same parcel of land. In determining the matter, the court remains mindful of the evidentiary burden each party must discharge to substantiate their claim. This position is succinctly captured in Sections 107, 109 and 112 of the *Evidence Act*.
32. It is not disputed that the property, the subject of the present dispute, has yet to be registered. The courts have held that proof of ownership of unregistered land is to be found in documentary evidence which leads to the root of title. Speaking to this, the Court in *Caroline Awinja Ochieng & another vs Jane Anne Mbithe Gitau & 2 Others* [2015] eKLR persuasively stated as follows:

“In determining the above issue, it would perhaps be appropriate to first state that tracing ownership of unregistered land is dependent on tracing the root of title. Unlike registered land where ownership is domiciled and founded in the register of titles, ownership of unregistered land and the ascertainment or confirmation thereof involves the intricate journey of wading through documentary history. The simple reason is that unregistered titles exist only in the form of chains of documentary records. The court has to perform the delicate task of ascertaining that the documents availed by the parties are not only genuine but also lead to a good root of title minus any break in the chain. It is the delivery of deeds or documents which assist in proving not only dominion of unregistered land but also ownership. The deeds must establish an unbroken chain that leads to a good root of title or title paramount. A good compilation of the documents or deeds relating to the property and concerning the claimant as well as any previous owners leading to the title certainly proves ownership. It is such documents which are basically ‘the essential indicia of title to unregistered land’”: per Nourse LJ in *Sen v Headley* [1991] Ch 425 at 437.

The documents in my view are limitless. It could be one, they could be several. They must however establish the claimant's beneficial interest in the property. Examples of the deed or documents include, at least in the Kenyan context: sale agreements, Plot cards, Lease agreements, allotment letters, payment receipts for outgoings, confirmations by the title paramount, notices, et al.”

33. The Court is so guided.
34. The Plaintiff traces the root of its title to the suit property on a letter of allotment dated 21<sup>st</sup> September, 2001 to Rachel Kamau Wambui. He states that Rachel Kamau Wambui is his daughter and transferred the property to him. The transfer document has however not been evinced. The Plaintiff also adduced a beacon certificate dated 21<sup>st</sup> September, 2001. The said beacon certificate makes reference to the letter of allotment purportedly issued to him on the same date. There is however no letter of allotment in his name.



35. The Plaintiff has adduced receipts in respect of the application fees, survey fees and the beacon certificate fees dated 16<sup>th</sup> July, 2014, 13<sup>th</sup> March, 2015 and 16<sup>th</sup> July, 2014 respectively. He has also adduced the certificate for ground rent dated 27<sup>th</sup> March, 2015. The same is however in the name of Rachael Wambui.
36. On her part, the Defendant traces the root of her title to one Adrine Wanjiru Gachuhi. She adduced the sale agreement between herself and Ms Wanjiru entered into on 11<sup>th</sup> September, 2001 which was affirmed by PW2, Ms Wanjiru's husband and a witness to the agreement. The Defendant also adduced in evidence an allotment card in respect of the suit property. The card shows the original allottee was A Wanjiru Maina, whose name has been cancelled out in favour of the Defendant.
37. The Defendant also adduced into evidence a partial list which she stated was a list of plot beneficiaries of the Komarock Bridge Jua Kali Association. Ms Adrine Wanjiru's name appears under entry number 164. It is indicated in the list that the same was forwarded to the Town clerk for approval on the 28<sup>th</sup> May, 2001.
38. The Defendant has also adduced evidence of stand premium and ground rent both dated 29<sup>th</sup> October, 2012. There is also the letter from the District Commissioner recommending that pursuant to the report of the Joint Technical Team of the Komarock Bridge, title documents to the suit property be issued in the name of the Defendant.
39. Considering the two positions and the evidence as set out above, the court finds that as between the Plaintiff and the Defendant, the Defendant has sufficiently established the root of her title from Ms Adrine Wanjiru and established that Ms Wanjiru was initially allotted the property.
40. On the other hand, the Plaintiff while conceding that he was not the original owner of the suit property and alleging a transfer to himself from Racheal Wambui, did not lay any basis by way of evidence for the same.
41. In conclusion, the court finds that the Plaintiff has failed to prove his case on a balance of probabilities as against the Defendant. The Defendant has however established her case on a balance of probabilities.
42. The court makes the following final determination:
  - a. The Plaintiff's suit be and is hereby dismissed.
  - b. The Defendant's counterclaim is found to be merited and the court makes the following orders:
    - i. A declaration does hereby issue that the Defendant is the rightful owner of plot number 164-Komarock Bridge Jua Kali Residential Cum Commercial Plot Dandora Phase 1.
    - ii. The Plaintiff shall bear the costs of the suit and the counterclaim.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 6TH DAY OF MARCH, 2025.**

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Mr. Burugu for Plaintiff



Mr. Maina for Defendant

Court Assistant: Tracy

