



Mwanzia v Comrades Machakos Investment Company Limited & 3 others (Environment and Land Case Civil Suit 101 of 2018) [2024] KEELC 3643 (KLR) (2 May 2024) (Judgment)

Neutral citation: [2024] KEELC 3643 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 101 OF 2018**

MN GICHERU, J

MAY 2, 2024

BETWEEN

FRANCIS MUSEMBI MWANZIA PLAINTIFF

AND

**COMRADES MACHAKOS INVESTMENT COMPANY LIMITED 1ST
DEFENDANT**

ANDREW NDUU MAKUNDI 2ND DEFENDANT

CHARLES NZUKI KITUKU 3RD DEFENDANT

JAMES MUSEMBI MAINGI 4TH DEFENDANT

JUDGMENT

1. The plaintiff seeks the following reliefs against the defendant.
 - a. A declaration that the removal and/or expulsion of the plaintiff from the 1st defendant company was unlawful, unprocedural and *void ab initio*.
 - b. A declaration for the rectification of the 1st defendant's register of the roll of shareholders to reinstate and include the name of the plaintiff as an equal member and shareholder of the 1st defendant company.
 - c. A declaration that the 2nd, 3rd and 4th defendants hold the following parcels of land in trust for the 1st defendant company and for the plaintiff herein as a valid shareholder in the 1st defendant company.
 1. Yatta B2/Kwa Vonza/1341
 2. Kajiado/Kitengela/52371, 52372, 52373, 52374, 52375 and 52376, suit parcels.



- d. A declaration that the plaintiff, as a member and shareholder is an equal joint owner of all the assets purchased by the 1st defendant being the suit parcels and is entitled to all benefits and/or profits accruing thereof.
 - e. In the alternative and without prejudice to prayers (a), (b) and (c) above, an order for the valuation of all the suit parcels and the refund of the plaintiff's invested interest in the assets as per the current market value as of the date of valuation.
 - f. Costs and interest of the suit.
 - g. Any such or further relief as the court may deem fit and just to grant.
2. The plaintiff's case is as follows. He was an active and contributing member of the 1st defendant having registered on 26/6/2011. The members of the 1st defendant had originally formed a society by the name of Machakos Comrades Investment Society but they later changed it to Machakos Comrades Investment Company Limited and a certificate of incorporation was issued on 5/11/2014. The plaintiff is therefore a member and equal shareholder of the first defendant after having subscribed to fifty (50) shares and paid the requisite subscription and membership fees.
 3. On 7/8/2017, the plaintiff was suddenly and without due notice and in total disregard of the 1st defendant's Articles of Association purportedly removed and/or expelled from the membership of the 1st defendant and a total of Kshs. 230, 400/- refunded to him and said to be his total contribution at the time. This was despite the fact that the plaintiff as a shareholder had contributed to the acquisition of the suit parcels. The value of the suit parcels was not taken into consideration in the refund of Kshs. 230, 400/=. The plaintiff objected to the manner of his removal from the company and the meager amounts refunded. He wrote a letter dated 25/8/2017 demanding for compensation in respect to the suit parcels at the prevailing market value since the property has appreciated in value from the time of purchase to date.
 4. In support of his case, the plaintiff filed the following evidence.
 - a. Certificate of registration of Machakos Comrades Investment Society.
 - b. The constitution of the Society in (a) above.
 - c. Memorandum of Articles of Association of Comrades Machakos Investment Company Limited.
 - d. Certificate of incorporation of Comrades Machakos Investment Company Limited.
 - e. Copy of agreement for sale dated 12/5/2015.
 - f. Copy of title deed for LR. Yatta B2/Kwa Vonza 1341.
 - g. Copies of certificates of official search for LR. Kajiado/Kitengela/52371-76.
 - h. Copy of caution and application for its registration.
 - i. Copy of letter dated 25/8/2017.
 - j. Copies of minutes of meetings.
 - k. Copy of demand letter dated 12/6/2018.
 5. The 2nd, 3rd and 4th defendants filed a written statement of defence dated 24/7/2018 in which they aver as follows.



Firstly, they generally deny the plaintiff's claim.

Secondly, they aver that the 1st defendant exists only in the name because it has never transacted any business whatsoever and no share capital was ever contributed.

Thirdly, the suit parcels were never registered in the names of the three defendants as directors and officials of the 1st defendant to hold in trust for all shareholders.

Fourthly, no demand was ever made to the defendants.

Finally, the defendants do not admit the jurisdiction of this court and pray for the dismissal of the plaintiff's suit with costs.

6. In support of their case, the defendants filed the following evidence.
 - a. Witness statement by the second defendant.
 - b. Same documents in the list of the plaintiffs especially numbers 1, 2, 3, 4, 6, 7 and 10 in the plaintiff's list of documents.
7. At the trial on 28/11/2022, the plaintiff and the second defendant testified by adopting their witness statements and documents and reiterated their case as per their pleadings. They were then subjected to cross-examination by counsel for the adverse party.
8. Counsel for the parties filed their written submissions on 22/5/2023 and 23/10/2023. The submissions do not reveal clear cut issues but upon perusal of the defendants submissions, the following issues emerge.
 - i. Whether the court has jurisdiction to entertain the suit.
 - ii. Whether the dispute should have been referred to arbitration before being filed in court.
 - iii. Whether the first defendant has ever transacted any business and if it owns the suit parcels.
9. I have carefully considered the evidence adduced by both sides including the witness statements, documents and the witnesses' testimony at the trial. I have also considered the submissions by learned counsel for both sides and the law cited therein. I make the following findings on the three issues identified above.
10. Regarding the first issue, I find that the court has jurisdiction only in prayer (c) because it relates to ownership of the seven (7) land parcels. The other prayers are outside the jurisdiction of this court. Under Article 162 (2) (b) of the *Constitution*, the jurisdiction of this court is limited to environment and the use and occupation and title to, land disputes only. Prayers (a) (b), d and (e) do not relate to the environment, use and occupation of title to land.
11. As for the second issue of arbitration, since the defendants did not raise their objection at the earliest possible opportunity, I find that they acquiesced their right to make arbitration an issue at the submission stage after the suit has been heard conclusively.
12. Finally on whether the first defendant owns the suit parcels, I find that the plaintiff has not proved this crucial aspect of the case. It has emerged that there is a difference between Comrades Machakos Investment Company Limited and Machakos Comrades Investment Society. The plaintiff has not proved that the former which is the 1st defendant owns the suit parcels. He has not proved when the said parcels were purchased and how much they cost.



For the above stated reasons, it is clear that the plaintiff has not proved his case against the defendants on a balance of probabilities. I dismiss the plaintiff's suit with costs to the defendants.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 2ND DAY OF MAY 2024.

M. N. GICHERU

JUDGE

