



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 874 OF 2016

JOSIAH KARIUKI KARIMI.....PLAINTIFF

VERSUS

NAIROBI CITY COUNTY.....DEFENDANT

JUDGEMENT

1. By a plaint dated 26th July 2016 the plaintiff seeks judgment against the defendant for:-

1. A permanent injunction issued against the defendants whether by itself, its respective servants, agents and employee restraining them from interfering with and/or issuing allotment letters, agreement for lease and/or any documents to third parties in respect of Plot No 438 (CCN 347) 426A (CCN92) and 403 (CCN 282) Umoja II Zone 8 respectively.

2. General damages.

3. Costs of suit.

2. Upon being served with copies of plaint and summons to enter appearance the defendant entered appearance on 15th August 2016 through the firm of M/S Kagwe, Kamau and Karanja Advocates. I have gone through the court file and record and it appears it did not file a statement of defence.

3. The defendant however participated in the Notice of Motion dated 26th July 2016 culminating in the ruling delivered by this Honourable Court dated 18th December 2018. This confirms that the defendant has always been aware of this suit.

4. The matter was fixed for hearing on 14th October 2020. On this date there was no appearance for the defendant. The court was satisfied that the defendant had been duly served and directed that the matter proceeds exparte.

5. PW1 Joseiah Kariuki Karimi, the plaintiff herein adopted his witness statement dated 26th July 2016. He told the court in 2015 he bought Plot Numbers 426A, 403, and 438, situated at Umoja II Zone 8. He bought the plots from Gerald Mapasha, David Kangei Njoroge and Andrew K. Mwaganu respectively. The three sellers had been allotted the plots by the defendant. He visited the defendant's offices at Dandora and confirmed the sellers were the owners of the said plots. They proceeded to City Hall where the sale agreements and the respective Powers of Attorney were prepared by the defendant's lawyers.

6. PW1 said he paid the outstanding amounts in respect of the three plots and was issued with receipt by the defendant. He then waited for the defendant to prepare the leases in his name so that he could process the titles. He said that to date the defendant has neglected to issue the leases in his favour. He stated that he has incurred loss as a result of this delay as he would be earning income from the said plots.

7. In support of his case, the plaintiff relied on the documents in the list of documents dated 26th July 2016. He produced the letters of allotment dated 7th July 2003 as exhibit P1. A bundle of receipts of payment made to the defendant as exhibit P2, Handwritten notes exhibit P3, beacon certificate exhibit P4, clearance certificate of rates and other charges as exhibit P5, powers of attorney as exhibit P6, sale agreement as exhibit P7, plot ownership clearance certificate exhibit p8 and demand letter dated 5th July 2016 as exhibit P9.

8. At the close of his testimony the plaintiff tendered written submissions dated 7th December 2020.

9. I have considered the pleadings, the evidence on record and the written submissions together with the authorities cited. The issues for

determination are:-

(i) Whether the plaintiff ought to be issued with leases in respect of the suit plots.

(ii) Is he entitled to the reliefs sought?

(iii) Who should bear costs of this suit?

10. The plaintiff's case is uncontroverted. The defendant did not file any statement of the defence in answer to the plaintiff's claim. The plaintiff has exhibited sale agreements and powers of attorney to confirm that he bought the plots from the original allottees. He has also exhibited receipts issued by the defendant to confirm that he has paid all the charges. He is entitled to be issued with leases so that he can pursue titles for the said plots. Despite demand to the defendant no explanation was offered for the delay.

11. The transactions between the plaintiff and the original allottees of the said plots were sanctioned by the defendant. I find that the plaintiff's case is unchallenged. However, with respect to the prayer for damages I find that the plaintiff has failed to demonstrate that the defendant has issued leases to third parties instead of the plaintiff. I find that no breach of contract has been proved by the plaintiff. I decline to award any damages for breach of contract.

12. In conclusion, I find that the plaintiff has proved his case on a balance of probabilities as against the defendant. Accordingly, judgment is entered in his favour as follows:-

(a) That a permanent injunction is hereby issued restraining the defendant whether by itself, its servants and/or agents, employees from interfering with and/or issuing allotment letters, agreements for lease and/or any documents to third parties in respect of Plot Nos 438(CCN 347) 426A(CCN92) and 403 (CCN 2810 Umoja II Zone 8.

(b) That costs of this suit shall be borne by the defendant

It is so ordered.

Dated, signed and delivered in Nairobi on this 29th day of April 2021.

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Nyaga for the Plaintiff

No appearance for the Defendant

Phyllis - Court Assistant