



**Beshai Tropical Gardens Limited v Nyangori & 2 others (Environment & Land  
Case 130 of 2016) [2023] KEELC 16010 (KLR) (2 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16010 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 130 OF 2016**

**LN MBUGUA, J  
MARCH 2, 2023**

**BETWEEN**

**BESHAI TROPICAL GARDENS LIMITED ..... PLAINTIFF**

**AND**

**ROBERT NYANGORI ..... 1<sup>ST</sup> DEFENDANT**

**CAVINE OMBOGO ..... 2<sup>ND</sup> DEFENDANT**

**SALOME MURIITHI ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. Vide a plaint dated February 12, 2016, the plaintiff contends that it has always been the lawful and legal owner of the parcel of land known as Plot No A (unsurveyed), measuring approximately 0.02 hectares situated in Uhuru Estate, Nairobi. It is their case that the defendants have trespassed thereon and have refused to vacate. The plaintiff seeks the eviction of the defendants.
2. The defendants were served through the Daily Nation Newspaper of Friday May 28, 2021, but they failed to enter appearance, thus the suit is undefended.
3. PW1, Salome Gakenia Kabando testified that she is the plaintiff's director alongside her husband Nicholas Kabando who is now deceased. She adopted her witness statement dated November 23, 2021 as her evidence and she also produced the 5 documents in her list dated November 23, 2021 as P Exhibit 1-5.
4. Pw1 avers that the plaintiff purchased the suit property from one Raymond Kipchumba Gakuru, *vide* a sale agreement dated April 8, 2015, of which the plaintiff paid the full purchase price of ksh 900,000/=. The suit property was then transferred to the plaintiff, and the transfer was noted in the allotment letter dated May 3, 1996 issued to Raymond Gakuru and produced as P Exhibit 1.



5. The plaintiff's submissions are dated 2 January 5, 2021 where it contends that it legally acquired the suit property, adding that the receipts from Nairobi City County acknowledge the plaintiff as the owner of the suit property. Thus the defendants are trespassers. In support of their case, the plaintiffs relied on the cases of *Josphat Kuria Gathoni v James Maina Njoroge & 3 others* [2019] eKLR and *Marcus Mutua Muluvi Vs Philip Tonui* [2012] eKLR.
6. The issue for determination is whether the plaintiff should be declared as the owner of Plot No A (unsurveyed) Rabai Road, Nairobi?, and if this is in the affirmative, whether an order of eviction should be issued against the defendants.
7. The suit Plot No A (unsurveyed) is allegedly occupied by the defendants, who failed to enter appearance despite being served with the summons and pleadings herein. However, the plaintiff still bears the burden of proving its case on a balance of probabilities as required by the law.
8. The suit land is not titled. In *Awinja Ochieng & another v Jane Anne Mbithe Gitau & 2 others* [2015] eKLR the court stated that;

“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.”

9. The plaintiff has availed the letter of allocation dated May 3, 1996, showing Raymond Gakuru as the person who was allocated the land and he then transferred the same to the plaintiff. Further, the plaintiff has availed documents to show that it is the one which pays ground rent for the suit plot. In addition, the plaintiff has availed other supporting documents like the sale agreement and the beacon certificate.
10. I find that the documents produced by the plaintiff form an unbroken chain which points to the plaintiff as the owner of the suit plot. I therefore find that plaintiff's claim is merited. Thus judgement is hereby entered for the plaintiff against the defendants jointly and severally, for the eviction of the defendants who are also condemned to pay costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MARCH, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Njomo for Plaintiff

Court assistant: Vanilla

