



**Karuga v Wangunyu (Environment & Land Case E357 of 2022)
[2023] KEELC 17367 (KLR) (9 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17367 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E357 OF 2022**

JO MBOYA, J

MAY 9, 2023

BETWEEN

SIMON MAINA KARUGA PLAINTIFF

AND

NGIGI WANGUNYU DEFENDANT

JUDGMENT

1. The Plaintiff filed the suit herein *vide* Plaint dated the October 28, 2022 and the same has itemized various reliefs at the foot of the Plaint. Subsequently, the Plaintiff extracted summons to enter appearance and the same were duly served upon the Defendant in accordance with the provisions of Order 5 of the Civil Procedure Rules, 2010.
2. Nevertheless, despite having been duly served, the Defendant, failed/neglected to enter appearance and file the statement of defence. In the premises, the suit herein proceeded for hearing/formal proof, albeit in the absence of the Defendant.
3. It is instructive to point out that the Plaintiff herein testified as PW1 and the same essentially adopted the witness statement dated the October 28, 2022 as his evidence in chief. Besides, the Plaintiff also adopted and relied on the bundle of documents that were filed at the foot of the list and the bundle of documents dated the October 28, 2022.
4. Having listened to the Plaintiff's evidence, on the May 9, 2023; and thereafter having considered the bundle of documents that were produced before the court, I come to the conclusion that the Plaintiff has duly proved and established that the same is the lawful and bonafide owner/proprietor of the suit property, namely plot number 067, formerly plot number 505. For clarity, the ownership of the plot is vindicated vide the certificate of ownership duly signed by the officials of the society.
5. In any event, it is also imperative to observe that the Plaintiff's evidence (both oral and documentary) have not been challenged and or controverted. Consequently, the thrust and substratum of evidence



has not been disputed. In the premises, there is no gainsaying that the Plaintiff's rights and interest over the suit property merits protection under the law.

6. In addition, even though the Plaintiff has not been issued with the certificate of title in terms of Sections 25 of the [Land Registration Act](#), 2012, no doubt the certificate of ownership beforehand, does operate to confirm and underscore the Plaintiff's rights.
7. As pertains to whether such certificate of ownership, would suffice, it is imperative to take cognizance of the holding by the Court of Appeal in the case of [M'Kiriara M'Mukanya & another v Gilbert Kabeere M'Mbijiwe](#) [1984] eKLR; where the court stated and held as hereunder:-

“In this case there was no dispute that M'Mbijiwe had paid the rent (if it were a licence the fees or royalties as the case may be); there was no evidence of breach of any condition nor was there any evidence that he had remained in unlawful possession, and, if any of the foregoing events which lead to determination of a licence or a lease had occurred, the Council never brought proceedings for the recovery of the land in question, which it had to do before the land could be free for reallocation. Failure to turn up at the Council's office to be shown the pegs of one's plot as requested in the letter of indication is not one of the causes specified under section 39(1) and (3) of the Act for determining a licence. So whichever way one treats M'Mbijiwe's interest, that is, whether one calls it a lease, which I do, or a licence it could not be determined except in accordance with the provisions of the Act which required the Council to determine the interest only by a Court order. The Council having accepted and received payment for the plot by way of rent from M'Mbijiwe could not turn round and say that he had no interest in the plot.”

8. Premised on the foregoing, it is thus evident that one need not be in possession of a certificate of lease/ title, to warrant a declaration of being the owner. Clearly, there exists such other documents, which can be relied upon to ascertain ownership, more particularly, when the process towards issuance of the ultimate certificate of lease is still ongoing.
9. In view of the foregoing, I do find and hold that the Plaintiff is the lawful and registered owner of the suit property and by virtue of such ownership the Plaintiff is entitled to the requisite orders towards the vindication of his certificate of ownership.
10. In addition, it is instructive to adopt and restate the holding of the court in the case of [Waas Enterprises Limited v City Council of Nairobi & another](#) [2014] eKLR, where the Honourable court emphasized on the import and tenor of the certificate of ownership and confirms that the bearer of such certificate of ownerships deserves the protection until and unless the same is cancelled.
11. For coherence, the Honorable court stated thus:-

“As a registered proprietor, the plaintiff is entitled to enjoy all proprietary rights to the exclusion of all others. This includes the right to exclusive possession of the suit land. The rights of a proprietor of land are set out in Sections 24 and 25 of the [Land Registration Act](#) which provide as follows :-

“24. Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and



- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
1. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 2. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.”

It therefore follows from the above that only the plaintiff is entitled to enjoy proprietary rights over the suit land. The 2nd defendant had no right to the suit land. She must therefore vacate the suit land and hand over possession to the plaintiff.”

12. Furthermore, the sanctity of the certificate of title/ownership was also underscored by the Court of Appeal in the case of *Joseph NK Arap Ng'ok Vs Moiyo Ole Keiwna* [1997] eKLR, where the court stated and held thus:-

“Section 23(1) of the Act gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.”

13. Invariably, the issuance of the certificate of ownership in favor of the Plaintiff operates to vest and bestow upon the bearer/owner of the land lawful rights which must be protected by the court, unless the certificate of title/ownership was procured by fraud, illegality or misrepresentation.
14. Clearly, in this case, no evidence has been availed to allege that the Plaintiff's certificate of ownership was procured *vide* fraud or otherwise. In the premises, the Plaintiff is entitled to the protection of the court.
15. Consequently, and premised on the foregoing, I do find merits in the Plaintiff's case and do hereby enter judgment in favour of the Plaintiff as prayed for in the Plaint dated the October 28, 2022. In addition, the Plaintiff be and is hereby awarded costs of the suit to be taxed and certified by the Deputy Registrar of the court.
16. Finally and for good measure, the Defendant shall vacate the suit property and hand over vacant possession to the Plaintiff within sixty (60) days; and in default by the Defendant to vacate within the stipulated time lines, an eviction order shall issue and the Defendant shall be forcibly or forcefully evicted from the suit property.



17. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF MAY, 2023.

OGUTTU MBOYA

JUDGE

In the presence of:

Benson – court assistant

Mr. Petersons Angwenyi for the the Plaintiff

No appearance for the Defendant

