



**Waweru & 7 others v Yahya M. Suleiman and Naima Suleiman t/
a Ima Flowers Farm & another (Environment & Land Case 108 of 2022)
[2023] KEELC 20199 (KLR) (19 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20199 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 108 OF 2022
BM EBOSO, J
SEPTEMBER 19, 2023**

BETWEEN

**JULIUS MAINA WAWERU 1ST PLAINTIFF
JOHN KIHARA NJIIRI 2ND PLAINTIFF
JOSEPH MAINA MURIU 3RD PLAINTIFF
JOSEPH WAWERU NGURA 4TH PLAINTIFF
DANIEL NGARI KIIRITHIO 5TH PLAINTIFF
GEORGE MIRIE 6TH PLAINTIFF
GODFREY GICHACHI WAHOME 7TH PLAINTIFF
WINFRED WATIRI WAMBUI 8TH PLAINTIFF**

AND

**YAHYA M. SULEIMAN AND NAIMA SULEIMAN T/A IMA FLOWERS
FARM 1ST DEFENDANT
FRANCIS MWAURA CHEGE AND PAULINE WANJIRU MUIRURI T/A
PAWAMU BASE INVESTMENTS 2ND DEFENDANT**

JUDGMENT

Background

1. The plaintiffs initiated this suit through a plaint dated 20/9/2022. They sought the following verbatim reliefs against the defendants:



1. A declaration that the plaintiffs are the lawful and *bona fide* owners of their respective parcels of land that they are in occupation of or possession of being subdivisions of all that parcel of land known as L.R no 4148/1442.
 2. An order directing the defendants to procure, execute and supply or deliver up to the plaintiffs or their advocate all completion documents necessary for registration of a transfer and issuance of certificate of title to their respective parcels of land that they are in occupation of or possession of, being subdivisions of all that parcel of land LR no 4148/1442. The completion documents include but not limited to:
 - i. Original certificate of title and deed plans for each of the plaintiffs' plot
 - ii. Original Certificate of Subdivision of LR no 4148/1442
 - iii. Duly executed and attested transfer instruments
 - iv. Copy of Certificate of Registration of Ima Flowers Farm
 - v. Copies of the ID/PIN Certificates for Yahya M. Suleiman and Naima Suleiman
 - vi. Copy of registration certificate of Pawamu Base Investments
 - vii. Copies of ID/PIN for Francis Mwaura Chege & Pauline Wanjiru Muiruri
 - viii. Rates and rent clearance certificates
 - ix. Spousal consents
 3. In default of the defendants executing the transfer instruments stated in order (b) above, the Deputy Registrar of this court to execute the instruments of transfer and all the documents necessary for registration of a transfer issuance of certificate of title to the plaintiffs' respective parcels of land that they are in occupation of or possession of being subdivisions of all that parcel of land known as LR no 4148/1442.
 4. The defendants do refund all monies paid to the firm of Wanjama & Co advocates by the plaintiffs amounting to ksh 560, 000 within seven (7) of the judgment herein. (*sic*)
 5. The defendants do refund the sum of ksh 185, 000 paid by the plaintiffs as transfer fees.
 6. An order directing the defendant to reserve four plots measuring 0.0290 ha for public utilities.
 7. An order directing the defendants to resurvey land parcel L.R no 4148/1442 to provide for the sewer line on the lower side without affecting the size and ownership of the plaintiffs' properties.
 8. Costs of the suit and interest.
2. The 4th plaintiff withdrew his suit against the defendants *vide* a notice of withdrawal of suit dated 20/1/2023.
 3. The defendants filed a notice of appointment of advocates dated 7/11/2022, appointing M/s Wanjama & Company to act for them. They did not file a defence, despite their advocate, mr Wanjama, being present in court on 8/11/2022 when the court directed parties to, among other things, file their respective trial bundles. Consequently, the suit was heard as an undefended cause. It now falls for determination.



4. The plaintiffs' case is that the 1st defendant was the original registered owner of land parcel number 4148/18, situated in Ruiru. The 1st defendant subdivided the said parcel into two portions, namely, L.R no 4148/1442 and L.R no 4148/1443. The 1st defendant subsequently sold L.R no 4148/1442, measuring 5 acres, to the 2nd defendant. The 2nd defendant subdivided L.R no 4148/1442 into 55 plots and sold them to various purchasers, among them, the plaintiffs. The 2nd defendant issued to the purchasers share certificates in the name of Pawamu Base Investments as interim proof of ownership, pending the processing of titles relating to their plots.
5. Some of the purchasers later sold their plots to third parties. To authenticate the sale to third parties, the 2nd defendant similarly issued the third parties with new share certificates, at a fee, and cancelled the share certificates previously held by the original purchasers of the plots. The purchasers took possession of the plots and have developed residential houses where they live with their families.
6. The plaintiffs contend that in November 2008, the 2nd defendant, through M/s Wanjama & Company Advocates, requested them to pay a sum of ksh 90,000 each, being the cost of processing titles relating to the plots. The said sums were to be paid in three instalments as follows: the first instalment of ksh 35,000 was payable by end of November 2018; the second instalment of ksh 30,000 was payable upon completion of survey works; and the balance of ksh 25,000 was payable on collection of the title. The 2nd defendant promised the plaintiffs that the said process would be completed within one hundred and fifty days from 1/12/2018.
7. It is the plaintiffs' case that despite paying the purchase price for the plots and paying approximately ksh 185,000 towards transfer/ processing costs, they are yet to be issued with the titles. The plaintiffs contend that despite demanding that the defendants do complete the process of registration and do provide them with the titles, the defendants have failed to do so, hence the decision to seek redress in this court.

Evidence

8. At the hearing, all the seven plaintiffs testified. Julius Maina Waweru testified as PW1. He adopted his witness statement dated 5/9/2022 as part of his sworn evidence-in-chief. He produced the following seven exhibits: (i) Copy of the CR12 for Pawamu Base Investments; (ii) Copy of the Certificate of Title for Land Reference Number 4148/18; (iii) Copies of Sale Agreements; (iv) Copies of Receipts; (v) Copies of Share Certificates from Pawamu Base Investments; (vi) Copies of Cheques; and (vii) Copies of Letters from M/s Wanjama & Company Advocates. PW1 reiterated the averments made in the plaint dated 20/9/2022.
9. PW1 stated that the 1st defendant was the original registered owner of land parcel number 4148/18, situated in Ruiru. The 1st defendant subdivided the said parcel into two portions i.e, L.R no 4148/1442 and L.R. no 4148/1443 and sold L.R. no 4148/1442, measuring 5 acres, to the 2nd defendant, who in turn subdivided the said parcel into 55 plots and sold them to various purchasers. PW1 further stated that the 2nd defendant used to issue share certificates in the name of Pawamu Base Investments as proof of ownership, pending the processing of titles for the plots.
10. PW1 asserted that some of the purchasers later sold their plots to third parties and in order to authenticate the sale, the 2nd defendant issued the third parties with new share certificates at a fee and cancelled the share certificates previously held by the previous purchasers of the plots. Most of the purchasers took possession of the plots and have developed residential houses on them, where they live with their families. PW1 bought Plot Number 6 in the subdivision scheme on 23/2/2012 from Lucy Wanjiru Kimemia who held share certificate number 015, issued by the 2nd defendant. PW1 paid a



purchase price of ksh 800,000 and was issued with Share Certificate Number 045, dated 30/4/2012, by the 2nd defendant. However, the 2nd defendant has failed to process the title as promised.

11. PW1 further stated that sometime in November 2018, the 2nd defendant, through M/s Wanjama & Company Advocates, requested him and the other plaintiffs to pay a sum of ksh 90,000 each, being the cost of processing the titles. The said sum was to be paid in three instalments as follows: the first instalment of ksh 35,000 was to be paid by end of November 2018; the second instalment of ksh 30,000 was to be paid upon completion of survey work; and the balance of ksh 25,000 was to be paid on collection of the titles to the plots. The 2nd defendant promised him and the other plaintiffs that the said process would be completed within one hundred and fifty days from 1/12/2018. PW1 stated that he paid M/s Wanjama & Company Advocates ksh 90,000, pursuant to the above request.
12. PW1 testified that despite him paying the purchase price and transfer/processing fees, he was yet to receive his title. PW1 further stated that despite demanding that the defendants do complete the process of registration and do provide him with a certificate of title, the defendants had failed to do so, hence the decision to seek redress in this court.
13. John Kihara Njiri testified as PW2. He adopted his written witness statement dated 5/9/2022 as part of his sworn evidence-in-chief. He relied on the documents on pages 66 to 74 produced as exhibits by PW1. PW2 reiterated the averments made in the plaint.
14. Joseph Maina Muriu testified as PW3. He adopted his witness statement dated 5/9/2022 as part of his sworn evidence-in-chief. He relied on the documents contained on pages 75 to 78 of the bundle of documents, produced as exhibits by PW1.
15. Daniel Ngari Kiirithio testified as PW4. He adopted his witness statement dated 5/9/2022 as part of his sworn evidence-in-chief. He relied on the documents contained on pages 92 to 106 of the plaintiffs' bundle of documents, produced by PW1. PW4 reiterated the averments made in the plaint dated 20/9/2022.
16. George Mirie testified as PW5. He adopted his witness statement dated 5/9/2022 as part of his sworn evidence-in-chief. He relied on the documents contained at pages 107 to 111 of the plaintiffs' bundle of documents dated 20/9/2022, produced by PW1 as part of the plaintiffs' exhibits. He prayed for the reliefs sought in the plaint.
17. Winfred Watiri Wambui testified as PW6. She adopted her witness statement dated 13/9/2022 as part of her sworn evidence-in-chief. She relied on the document contained at page 116 of the plaintiffs' bundle of documents dated 20/9/2022. She prayed for the reliefs sought in the plaint.
18. Godfrey Gichachi Wahome testified as PW7. He adopted his witness statement dated 8/9/2022 as part of his sworn evidence-in-chief. He produced the documents contained at pages 112 to 115 of the plaintiffs' bundle of documents. He prayed for the reliefs sought in the plaint.

Submissions

19. Upon conclusion of trial, the plaintiffs filed written submissions dated 12/7/2023 through M/s W. Kibanya & Kamau Associates Advocates. Counsel for the plaintiffs identified the following as the five issues that fell for determination in the suit: (i) Whether the plaintiffs are *bona fide* owners of the properties they possess; (ii) Whether the plaintiffs are entitled to completion documents; (iii) Whether the defendants should refund to the plaintiffs the sum of ksh 560,000 and ksh 185,000; (iv) Whether the defendants should reserve land for public utilities/sewer line; and (v) Which party should bear costs of the suit.



20. On whether the plaintiffs were *bona fide* owners of the properties they possess, counsel submitted that it was undisputed that the 1st defendant was the registered owner of Land Reference Number 4148/18 which it subdivided into two: (i) L.R. no 4148/1442; and (ii) L.R. 4148/1443. The 1st defendant thereafter sold L.R. no 4148/1442, measuring approximately 5 acres, to the 2nd defendant. It was counsel's submission that the 2nd defendant subdivided the five acres into 55 plots and sold them to different people. He issued the purchasers with certificates as proof of ownership. Counsel submitted that each of the plaintiffs had produced a certificate as proof of ownership.
21. Counsel contended that some buyers bought plots directly from the 2nd defendant while others were either second or third generation buyers. Counsel further submitted that the plaintiffs took possession of their plots and some developed them and have been living there with their families.
22. Counsel asserted that the survey plan relating to subdivision of L.R. no 4148/1442 was finalized, presented and approved by the Department of Survey on 6/4/2021, and the survey plan reflected the land references of each of the subdivisions. Counsel contended that in the letters dated 13/4/2022 and 1/8/2022, M/s Wanjama Advocates acknowledged the purchase of the plots by the plaintiffs, hence there was an admission that the plaintiffs were bona fide purchasers of their respective plots. Counsel further submitted that the defendants had neither filed defences to contest the plaintiffs' claim nor led evidence to counter the plaintiffs' evidence.
23. On whether the plaintiffs were entitled to completion documents, counsel submitted that the plaintiffs duly paid purchase price for their properties, hence they were entitled to completion documents.
24. On whether the defendants should refund the sum of ksh 560,000 and ksh 180,000 paid by the plaintiffs, it was counsel's submission that the plaintiffs had produced documents and receipts issued by M/s Wanjama & Company Advocates to prove that they paid the said amounts. Counsel further submitted that the 2nd defendant had not delivered titles to the plaintiffs as promised.
25. On whether the defendants should reserve land for public utilities/sewer line, counsel contended that the process of subdivision of LR 4148/18 was not in accordance with the physical and land use planning law. Counsel submitted that the said Act required that some land be set aside for public purpose and that one of the objectives of development control is to ensure public safety and availability of social amenities to people. Counsel further submitted that the 1st defendant did not produce evidence to show that he had obtained development permission as required under the law.
26. On the issue of costs, counsel relied on the principle that costs follow the event and urged the court to award the plaintiffs' costs of the suit.

Analysis and Determination

27. I have considered the pleadings; the evidence; and the submissions tendered in this suit. The suit is undefended. Two questions fall for determination. The first question is whether the plaintiffs have discharged their burden of proof under the *Evidence Act*. The second issue is whether the reliefs sought in the plaint are available to the plaintiffs. I will make brief sequential pronouncements on the two issues in the above order.
28. Under Section 107 of the *Evidence Act*, the burden of proof lies on the party who alleges. Where a suit is undefended, the burden of proof lies on the claimant. It therefore follows that, notwithstanding the fact that this suit was undefended, the plaintiffs had the burden of proving the allegations which they made in the plaint dated 20/9/2022. Did the plaintiffs discharge their respective burden?



29. Joseph Waweru Ngura [the 4th plaintiff] withdrew his claim through a notice of withdrawal dated 20/1/2023, filed on 25/1/2023. Consequently, his claim is marked as withdrawn.
30. Each of the other seven plaintiffs led both oral and documentary evidence. The evidence shows that Land Reference Number 4148/1442 is a subdivision out of Land Reference Number 4148/18 which, as at 13/5/2022, was registered in the name of Yahya M Suleiman and Naima Suleiman, trading as Ima Flowers Farm. The plaintiffs also led evidence indicating that through an agreement dated 27/8/2003, Yahya M Suleiman and Naima Suleiman sold to Francis Mwaura Chege and Pauline Wanjiru Muiruri five [5] acres out of Land Reference Number 4148/18. The plaintiffs tendered evidence demonstrating that the duo subsequently subdivided the 5 acres comprised in L.R no 4148/1442 into 50 plots and sold them to purchasers, among them, the plaintiffs. They demonstrated that the defendants were privy to all sales/purchases relating to the plots.
31. The plaintiffs gave evidence that they have been in possession of the plots and some of them have fully developed the plots and are in occupation of the developments. They exhibited photographs of the developments. They contended that the defendants failed to process titles relating to the plots. The totality of the above evidence is that the seven plaintiffs who tendered evidence in support of their respective claims have properly discharged their burden of proof in relation to their respective claims.
32. Are the plaintiffs entitled to the reliefs sought in the plaint? All the defendants entered appearance through a notice of appointment dated 7/11/2022, filed by M/s Wanjama & Company Advocates on 8/11/2022. Mr Wanjama attended court on 8/11/2022 and informed the court that the defendants were going to consent to some of the prayers that were sought in the motion that came up for hearing on that day. The defendants did not attend the subsequent court sessions despite having been served with notices. There was no objection to any of the prayers that were sought in the plaint. In the circumstances, the court has no proper basis for declining to grant the reliefs. The court will grant the seven reliefs that were sought in the plaint.
33. In the end, Judgment is entered in favour of the 1st, 2nd, 3rd, 5th, 6th, 7th and 8th plaintiffs against Yahya M Suleiman, Naima Suleiman, Francis Mwaura Chege and Pauline Wanjiru Muiru jointly and severally in the following terms:
 1. A declaration is hereby made that the plaintiffs are the lawful and *bona fide* owners of their respective parcels of land that they are in occupation of or possession of being subdivisions of all that parcel of land known as L.R no 4148/1442.
 2. An order is hereby made directing the defendants to procure, execute and supply or deliver up to the plaintiffs or their advocate all completion documents necessary for registration of a transfer and issuance of certificate of title they are in occupation of or possession to their respective parcels of land that they are in occupation of or possession of, being subdivisions of all that parcel of land LR no 4148/1442. The completion documents include but not limited to:
 - i. Original certificate of title and deed plans for each of the plaintiffs' plot.
 - ii. Original Certificate of Subdivision of LR no 4148/1442
 - iii. Duly executed and attested transfer instruments
 - iv. Copy of Certificate of Registration of Ima Flowers Farm
 - v. Copies of the ID/PIN Certificates for Yahya M. Suleiman and Naima Suleiman



- vi. Copy of registration certificate of Pawamu Base Investments
 - vii. Copies of ID/PIN for Francis Mwaura Chege & Pauline Wanjiru Muiruri
 - viii. Rates and rent clearance certificates
 - ix. Spousal consents
3. In default of the defendants executing the transfer instruments stated in order (b) above, the Deputy Registrar of this court to execute the instruments of transfer and all the documents necessary for registration of a transfer issuance of certificate of title to the plaintiffs' respective parcels of land that they are in occupation of or possession of being subdivisions of all that parcel of land known as LR no 4148/1442.
 4. The defendants do refund all monies paid to the firm of Wanjama & Co advocates by the plaintiffs amounting to ksh 560, 000 within seven (7) of the judgment herein. (*sic*).
 5. The defendants do refund the sum of ksh 185, 000 paid by the plaintiffs as transfer fees.
 6. An order is hereby made directing the defendant to reserve four plots measuring 0.0290 ha for public utilities.
 7. An order is hereby made directing the defendants to resurvey land parcel L.R no 4148/1442 to provide for the sewer line on the lower side without affecting the size and ownership of the plaintiffs' properties.
 8. The defendants shall bear costs of this suit jointly and severally.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 19TH DAY OF SEPTEMBER 2023

B M EBOSO

JUDGE

In the Presence of: -

Mr Kamau for the Plaintiffs

Court Assistant: Osodo/Hinga

