



Kinyuanjui v Embakasi Ranching Company Limited (Environment & Land Case 1580 of 2014) [2023] KEELC 20695 (KLR) (5 October 2023) (Judgment)

Neutral citation: [2023] KEELC 20695 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1580 OF 2014**

**J OMANGE, J
OCTOBER 5, 2023**

BETWEEN

SUSAN NJAMBI KINYUANJUI PLAINTIFF

AND

EMBAKASI RANCHING COMPANY LIMITED DEFENDANT

JUDGMENT

1. This case arises from Plots P2064, P2064B, D460 and D460B Nairobi in Embakasi Ranching Company Limited situated in Ruai hereinafter referred to as the suit properties.
2. In an amended plaint dated 30th January 2023 the Plaintiff averred that she entered into a sale agreement dated 22nd September 1989 with one of the Defendant's shareholders one Mr. David Kiarie Gatororto and was issued with a share certificate no 977. She purchased two shares for Plots NO P2064 and D460 where each share entitled her to one bonus plot.
3. She further avers that despite meeting the obligation on her part which obligation included paying allocation fees for the 2 bonus plots, the properties have never been transferred to her name. The Plaintiff states that she discovered the defendant had unlawfully settled, licensed and put in possession the suit properties herein to other 3rd parties despite having purchased the same.
4. The Plaintiff further avers that the Defendant admitted to the unlawful act and undertook to allocate her other plots within the same locality. This has never materialized prompting the filing of this suit.
5. She therefore prayed for the following orders;
 - i. An order of mandatory injunction to compel the Defendant to put the Plaintiff in actual and physical possession of plots NO P2064, P2064B, D460 and D460B, within map 7, Embakasi Ranching Company Limited Ruai, Nairobi or in the alternative re-allocate the plaintiff with suitable plots within



the locality of map 7, Embakasi Ranching company Limited , Ruai , Nairobi acceptable to the Plaintiff.

- ii. In the alternative an order that the defendant compensates the Plaintiff with the current value of Ksh 5, 500,000 each for the dispossessed 4 plots totaling to the sum of Ksh 22, 000,000/=.
 - iii. Exemplary damages.
 - iv. Costs of the suit plus interest thereon.
 - v. Any other further relief that the court deems fit.
6. The Defendants were duly served with all relevant pleadings and failed to enter appearance and file their statement of defence. The matter proceeded for formal proof.
 7. The Plaintiff testified in court on 25th April 2023 and relied on her witness statement dated 18th September, 2014 in which she told the court that she had purchased the suit properties herein in 1989 from one David Kiarie Gatororto who was a shareholder of the Defendant. She said that by dint of having purchased two plots she was entitled to two bonus plots. She was allocated the four plots herein and she put up beacons. She informed the court that the sale was formalized vide a sale agreement dated 22nd September 1989.
 8. She stated that she visited the suit properties to find that unbeknown to her, the suit properties had been unlawfully allocated to third parties. She referred the court to the list of documents and asked the court to grant the mandatory order sought or in the alternative order compensation in accordance to the valuation report.
 9. PW2 who is a licensed valuer relied on his witness statement and produced a valuation report he prepared on the instructions of the Plaintiff. It was his evidence that a quarter acre plot in the area is valued at Kshs 5,500,000 hence the four plots are valued at Ksh 22,00,000.
 10. Counsel for the Plaintiff submitted that the plaintiff has established that the Plaintiff had legally acquired ownership to the properties herein. He further submitted that the defendant had unlawfully passed possession of the Plaintiff's properties to 3rd parties. He urged the court to compensate the Plaintiff as per the valuers report dated 15th November 2022. He stressed that the Plaintiffs testimony was uncontroverted as held in the case of *Shaneebal Limited v County Government of Machakos* (2018).
 11. The Defendant did not enter appearance or file a statement of defence. The case of *Daniel Kenga Katana & 4 others v Dzitu Toto Bokole & 3 others* [2022] eKLR addressed the issue of uncontroverted evidence. The learned Judge stated; "The issue that the court has to deal with is whether the Plaintiff discharged the burden of proof. The Plaintiff gave evidence to proof ownership of the suit land by adducing oral and documentary evidence which was uncontroverted. It is trite that uncontroverted evidence is weighty and courts will rely on it to prove facts in dispute. The evidence cannot be controverted by allegations in the statement of defence if the defendants fail to call a witness to adduce evidence and be cross-examined to test the evidence." He restated the quote by Justice Mwongo in *Peter Ngigi & Another (suing as legal representative of the Estate of Joan Wambui Ngigi) v Thomas Ondiki Oduor & Another* 2019 eKLR wherein he stated "The general position running through such authorities is that uncontroverted evidence bears a lot of weight and a statement of defence without any evidence to support the assertions therein will amount to mere statements".



12. Although the Plaintiffs case was unchallenged and uncontroverted, the Plaintiff still has to discharge the burden of proof as envisaged by Sections 107 and 108 of the Evidence Act which define the Burden of Proof thus;

107. Burden of proof

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

13. In the case of Kenya Power & Lighting Company Limited v Nathan Karanja Gachoka & Another [2016] eKLR, the Court stated “I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence is unchallenged or not.’ The same sentiments have been echoed in the case of Gichinga Kibutha v Caroline Nduku [2018] eKLR “It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”

14. The Plaintiff produced both oral evidence and documentary evidence in which she told the court that she had entered into a sale agreement for the suit properties herein. Regarding the property P2064, the Plaintiff produced a letter of authority by one Kimani Goro who acted for the owner of the shares David Kiarie Gatoroto. She produced a copy of the identification card for David Kiarie Gatoroto and the share certificate in his name. She further produced documents by the Defendant acknowledging various payments for both P2064 and the bonus P2064B. In the absence of any contrary testimony by the Defendant I find that the Plaintiff has proved that she has sufficient interest in P0264 and P0264B.

15. Regarding the Plot number P460, I note that the share certificate was in the name of Makumi Mugo. The Plaintiff does not give any explanation how it passed to her. There is no attempt to prove any connection between Makumi Mugo and David Gatoroto and the Plaintiff. Further the Plaintiff does not have any documentation from the said Makumi Mugo such as his Identification card which would have corroborated her testimony. I therefore find that ownership of this plot and the bonus has not been sufficiently proved.

16. Having considered the foregoing, Judgement is entered for the Plaintiff against the Defendant as follows;

a. An order of mandatory injunction is issued to compel the defendant to put the plaintiff in actual and physical possession of plots NO P2064, P2064B, within map 7, Embakasi Ranching Company Limited Ruai, Nairobi or in the alternative re-allocate the Plaintiff with suitable plots within the locality of map 7, Embakasi Ranching company Limited , Ruai , Nairobi acceptable to the plaintiff within 120 days



- b. If the Defendant fails to carry out (a) within the stated period, an order is issued that the defendant compensates the plaintiff with the current value of Ksh 5, 500,000 each for the dispossessed 2 plots totaling to the sum of Ksh 11, 000,000/=.
- c. Costs of the suit plus interest thereon.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 5TH DAY OF OCTOBER 2023.

JUDY OMANGE

JUDGE

In the presence of:

Mr. Abuga for Mr. Maina for Plaintiff

Steve - Court Assistant

