



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO 667 OF 2013

REUBEN OPILE WILSON.....PLAINTIFF

=VERSUS=

LINET ADHIAMBO AMOLLO.....DEFENDANT

JUDGMENT

Introduction

1. This is another of the many cases where fraudulent documents are uttered to our courts in the name of land titles. The plaintiff holds **Grant Number IR 49914**, registered on 25/7/1990, comprising of **Land Reference Number 209/11057**. The grant relates to a parcel of land situated in Villa Franca, Embakasi, Nairobi [**the suit property**]. The parcel of land measures approximately 0.0940 of a hectare. The defendant contends that she too holds a grant bearing the same details, except the name of the registered proprietor. She further contends that her grant is delineated on the same deed plan, number 145722. As is common, the correspondence file “disappeared” from Ardhi House when required. It will emerge later in this judgment that the genuine duplicate title documents were removed from the deed file and fake documents were inserted in the deed file.

2. Through a plaint dated 5/6/2013, the plaintiff sought the following reliefs against the defendant: (i) a declaration that he was entitled to exclusive and unimpeded possession and occupation of the suit property; (ii) a permanent injunction restraining the defendant against entering, remaining on, or continuing in occupation of the suit property; (iii) an order of eviction against the defendant; (iv) general damages for trespass; and (v) costs of the suit.

Plaintiff’s Case

3. The case of the plaintiff is contained in the plaint dated 5/6/2013, the evidence tendered in court during trial; and the written submissions by his advocates, dated 16/9/2021. Besides the oral evidence which the plaintiff tendered, he adopted his written statement dated 5/6/2013 as part of his sworn evidence-in- chief. He produced a total of 7 exhibits as part of his evidence.

4. His case was that, he was a lecturer at Eldoret University. In 1987, while working at the Coffee Research Foundation in Ruiru, he applied to be allocated the suit property. Through a letter of allotment dated **2/11/1987**, the Commissioner of Land allocated him the suit property, which at that time was designated as **Plot No 34, Villa Franca, Nairobi**. The suit property was subsequently surveyed as **Land Reference Number 209/11057** vide **Deed Plan No 145722** and **Grant Number IR 49914** was prepared, registered and issued to him in July 1990.

5. It was his case that immediately he was issued with the Grant, he commenced construction on the land. He did the ground floor and the 1st floor. Construction works stalled due to financial difficulties when he was doing the walls of the 2nd floor. At some point, he relocated to his rural home in Bondo, Siaya County. When he went to the suit property in 2012, he found a roof on the structure he had left unroofed. The tenants who were in the structure were not able to identify their landlord. He engaged a private investigator and through the private investigator, he established that the defendant had trespassed onto the suit property, roofed his structure, and rented it. When he went to Lands Office, he was informed that the deed file was missing. At that point, he established that the defendant was in the process of illegally changing the title to the suit property.

6. **Gildine Karani** testified as **PW2**. She stated that she was a land registration officer working in the Office of the **Chief Land Registrar** at Ardhi House. She was delegated by the **Chief Land Registrar** to testify in the case. She presented the deed file relating to **Grant Number IR 49914**. She testified that the correspondence file was missing. The copy of title in the deed file was in the name of **Linet Adhiambo Amollo**, the defendant herein. There were no supporting documents leading to the issuance of the title in the name of **Linet Adhiambo Amollo**. Her evidence was that the title in the deed file was a forgery because: (i) the embossing stamp for stamp duty looked different from the other stamps in the same series; (ii) the booking stamp looked different and read “Department of Lands” instead of “Central Registry”; (iii) the red seal was sealed yet it is not supposed to be sealed; (iv) the font in the title document would usually be permanent and what would be inserted would be the name of the proprietor but in this particular title all the details were inserted; (v) the Registrar of Titles at the material time was **Gicheha** but the signature on the title was not Gicheha’s. She testified that the plaintiff’s title was the genuine title but its duplicate was not in the deed file. It was her evidence that efforts to trace the correspondence file were in vain and that the title in the deed

file in the name of Linet Adhiambo Amollo was a forgery.

7. In cross-examination, she testified that she compared the title in the name of Linet Adhiambo Amollo with the other titles which were registered in the same series on the same day and established that the entries in the title were not tallying with the rest but the entries in the name of Reuben Opile Wilson were tallying with the entries in the titles issued in the same series and on the same day.

8. The plaintiff filed written submissions dated 16/9/2021 through the firm of *Mbichire & Co Advocates*. Counsel for the plaintiff identified the following as the five issues falling for determination in the suit: (i) Whether the plaintiff is the registered owner of Land Reference Number 209/11057 Villa Franca; (ii) Whether the defendant's title to Land Reference Number 209/11057, Villa Franca, is valid; (iii) Whether the defendant has any rights to claim ownership over the suit property; (iv) Whether a permanent injunction should be issued restraining the defendant from trespassing on and interfering with the plaintiff's quiet possession and occupation of Land Reference Number 209/11057, Villa Franca; and (v) Whether the plaintiff is entitled to the orders sought.

9. On whether the plaintiff is the registered owner of the suit property, counsel submitted that the plaintiff had demonstrated how he obtained his title and had in this regard presented evidence to demonstrate that he applied for and was allocated the suit property in 1987; he paid the money specified in the allotment letter in 1987; and he was issued with the title that he holds. Counsel added that the plaintiff had further led evidence to demonstrate that upon obtaining his title, he embarked on development of the suit property but when he ran out of funds and relocated to his rural home, the defendant trespassed onto the suit property, roofed the plaintiff's structure and embarked on attempts to falsify documents relating to the suit property.

10. On issue numbers (ii) and (iii), counsel submitted that the defendant produced a purported title which had serious irregularities. Counsel added that the defendant admitted the contents of her identify card which indicated that she was born in 1971 at Homabay and that in 1987, she was a minor aged 16 years and not capable of acquiring land as an allottee. Counsel added that the defendant had failed to tender any allotment letter. Counsel submitted that the defendant had not exhibited any documents to suggest that she was paying rent or rates prior to the filing of this suit. Counsel added that the plaintiff's title was a forgery and thus invalid.

11. On issue numbers (iv) and (v), counsel submitted that based on the foregoing, it was clear that the plaintiff had proved his case on a balance of probability and that the defendant's defence and counterclaim were a sham. Counsel urged the court to grant the plaintiff the reliefs sought and dismiss the defendant's counterclaim.

Defendant's Case

12. At the commencement of the hearing on 14/5/2018, the defendant had not filed a defence in the suit. Her advocate confirmed that he did not have any defence in his office file. Counsel for the plaintiff similarly confirmed that he had not been served with any defence. The defendant never applied to file a defence out of time. Hearing therefore proceeded without any filed defence by the defendant. The defendant subsequently sneaked into the court file a document containing a one sentence statement of defence and a one sentence statement of counterclaim, dated 19/10/2018, purported to be drawn by the firm of *Dola Magani & Co Advocates*. The document reads as hereunder:

“DEFENSE AND COUNTER CLAIM

Save what is herein expressly admitted, the defendant denies each and every allegation of the fact and/or law set out in the plaint as if the same were set out verbatim and transversed seriatim and will put the plaintiff to strict prove at the hearing proof at the hearing thereof. [sic]

COUNTERCLAIM

The defendant raises a counterclaim in that she is a buyer for value in good faith and has been in the suit property for over 12 years since 1987 as the registered owner.

Dated at Nairobi this 19th day of October 2018.”

13. From the above purported defence and counterclaim, it is clear that the defendant's case, if any, was that she was a buyer for value [a purchaser for value] of the suit property.

14. At the hearing, the defendant testified as DW1 and led evidence by two other

witnesses. In her evidence, she adopted her two affidavits which she swore on 26/6/2014 and 2/10/2014 as part of her sworn evidence-in-chief. Her evidence was that she acquired the suit property by way of allotment and she paid for the allotment in 1987. At that time, the suit property had not been surveyed. She received the title from the Ministry of Lands on 25/7/1990. In 1995, she started developing the suit property by clearing the bushes and securing it with a barbed wire fence which she subsequently removed and constructed a stone wall.

15. During cross-examination, she stated that she was allocated the suit property in 1987 and all transactions relating to the allocation and to her title were carried out by the late **Peter Onalo – Advocate**. She added that in 1987, she was a student at Egerton University, having joined the University the same year. She graduated from the Egerton University in 1992. She further testified that her ID Card Number was **10820086** and that she was born in **1971**. She added that in 1987, [the year she was allegedly allocated the suit property], she was aged 16. She testified that in 1987, she did not have an ID Card and that she was issued with her first ID Card in 1990. It was her evidence that she did not have the allotment letter which was allegedly issued to her in 1987, contending that all transactions relating to the suit property were done by the late **Peter Onalo**. She added that she jointed Standard 1 in 1975 at Homabay Primary School. Asked when she did her Form 4

exam, she stated that she could not remember and that she needed time to calculate. Eventually, she stated that she did Form 4 in 1984 and did Form 6 in 1986. It was her evidence that she joined Form 1 in 1981.

16. The defendant further testified in cross-examination that she was not involved in the procurement of the allotment letter and all she knew was that she got the title from the late **Peter Onalo**. She did not know the Lands Officer who signed her allotment letter. She admitted that the figures in the receipt attached to the affidavit sworn on 26/6/2014 were not adding to Kshs. 57,500/-. She stated that she first paid land rates and rent relating to the suit property in 2012 and that she did not have any water bill or electricity bill pre-dating 2012.

17. **Emmanuel George Odhiambo** testified as **DW2**. His evidence was that he owned a company called **Jabs Construction**. In 1995, the defendant engaged her to construct for her a building on the suit property. In cross-examination, he stated that he trained at the University of Nairobi. He left the University of Nairobi in 1991. He did not know the name of his dean at the University of Nairobi. Similarly, he did not know the name of his Vice Chancellor at the time of joining and at the time of leaving the University of Nairobi. He could not remember the name of a single lecturer who taught him at the University of Nairobi. Lastly, he stated that Jabs Construction was registered in 2013 and that he was born in 1969.

18. **Asphel Kipkemoi Rotich** testified as **DW3**. He stated that he was a lawyer but not an advocate. He was an intern in the Civil Litigation Section of the Legal Department in the State Law Office at Sheria House but he was not on the Government Payroll. He graduated with a law degree from Shavaji, India, in 2000. He was a tenant in the suit property, paying a monthly rent of Kshs. 18,500/-.

19. Despite being given the opportunity on several occasions, the defendant did not lead more evidence. Further, despite being accorded the opportunity, the defendant elected not to file written submissions in the suit.

Analysis and Determination

20. I have considered the pleadings, the parties evidence; and the submissions filed in this suit. I have also considered the relevant legal frameworks and jurisprudence on the issues falling for determination in this suit. Parties did not agree on a common statement of issues. Taking into account the pleadings, evidence and submissions tendered in this suit, the following are the key issues that fall for determination in the suit: (i) Who is the legitimate proprietor of Land Reference Number 209/11057, comprised in Grant No IR 149914? (ii) Is the plaintiff entitled to the reliefs sought in the plaint; (iii) What order should be made in relation to the costs of this suit?

21. Before I focus on the above three issues, it is important to observe that the defendant caused a one sentence defence to be irregularly placed in the court file. All she said in the one sentence defence is that she was denying each and every allegation of fact and/or law made in the Plaint and she was putting the plaintiff to strict proof. Contained in the same document is a one sentence counterclaim in which she pleaded that she was “a buyer for value in good faith” and had “been in the suit property for over 12 years since 1987 as the registered owner.” She did not seek any relief in the irregular counterclaim. The purported defence and counterclaim were dated 19/10/2018 and were purported to have been signed and filed by *M/s Dola Magani & Co. Advocates*. The document does not bear any court stamp. The court record shows that when hearing of this matter commenced on 14/5/2018, the defendant had not filed any defence in the suit. Indeed Mr. Dola Indidis observed that he did not have any defence in his office file.

22. No application was made by the defendant to file a defence out of time or to admit the one sentence defence/counterclaim which the defendant tried to sneak into the court file long after the hearing had started. The plaintiff’s suit is therefore undefended in terms of pleadings. Even if the irregular pleadings were to be relied upon by the court, the case which is contained in the document is that the defendant acquired the suit property as “a buyer for value in good faith.” This is at variance with the evidence which the defendant presented to the court. The purported defence and counterclaim are therefore a sham and the evidence led by the defendant is worthless because it is not anchored on or aligned with any bonafide defence or counterclaim. I now turn to the first issue in this suit.

23. The first issue is the question as to who is the legitimate proprietor of the suit property. I have observed that the defendant did not file and serve a defence in this suit. The purported one page and one sentence defence, and the one sentence counterclaim, which the defendant sneaked into the court file without leave of the court long after the hearing had started is at variance with the evidence tendered by the plaintiff and cannot therefore be said to constitute a *bonafide* defence against the plaintiff’s case. The plaintiff demonstrated that he was allocated the suit property by the Government of Kenya in 1987 while working at the Coffee Research Foundation; he paid the moneys stipulated in the letter of allotment; the land was surveyed; a grant was processed and registered in his name; and he was issued with the grant in 1990. He produced the original letter of allotment, relevant receipts and the original grant. True copies of the documents were retained in the court file after the court and the parties had examined the originals.

24. On her part, the defendant did not have any letter of allotment. It was her evidence that the purported title she was waving was procured by the late Peter Onalo on her behalf. What emerged during cross-examination is that in 1987 [the year she purports to have been allocated the suit property], the defendant was a minor aged 16 years. She had no capacity to be allocated land. It is therefore not surprising that she does not have any letter of allotment.

25. Our courts have umpteen times stated that when a purported title is under challenge, it is not sufficient to dangle the same purported instrument of title as proof of ownership. The holder must go beyond the instrument and prove the legality on how he acquired it and demonstrate that the acquisition was lawful, formal and free from encumbrances [see the Court of Appeal decision in **Munyu Maina v Hiram Gathira Maina [2013] eKLR**].

26. What is most intriguing about the conduct of the defendant in this dispute is that she has engaged in a most astounding forgery. She has attempted to replicate a purported grant with details similar to the genuine grant held by the plaintiff. In collusion with criminal elements at the Lands Office, she has caused the genuine documents to be removed from the deed file and the forged ones to be inserted in the deed file. It does not end there; she has caused the correspondence file to disappear from the Land Administration Section where the correspondence file is kept. What she forgot is that every title has roots. Her purported title cannot be genuine when she did not apply to be allocated land; she has no evidence of any allocation; she was a minor when she purports to have been allocated the suit property; and she did not hold a

national identity card in 1987 when she purports to have been allocated the suit property. Given the above evidence, the court finds that the plaintiff is the legitimate owner of the suit property and the defendant is a trespasser thereon.

27. The second issue in this suit relates to the question as whether the plaintiff is entitled to the reliefs sought in the Plaintiff. My finding on the issue is in the affirmative. Having made a finding to the effect that the plaintiff is the legitimate owner of the suit property, it follows that the plaintiff's rights are protected under **Article 40** of the Constitution and **Sections 24, 25 and 26** of the **Land Registration Act**. I will in the circumstances grant the reliefs sought in the Plaintiff.

28. On general damages for trespass and illegal construction, the Plaintiff did not lead evidence or tender materials to assist the court in assessing reasonable general damages. In the circumstances, I will award the plaintiff nominal general damages of Kshs. 500,000/-. On costs the principle in **Section 27** of the **Civil Procedure Act** will apply and the defendant will bear costs of the suit.

Summary of Findings

29. In light of the foregoing, it is the finding of this court that: (i) the plaintiff is the legitimate proprietor of the suit property, LR No. 209/11057 comprised in Grant No IR 49914, and the purported title bearing the name of the defendant [copy of which the defendant presented as evidence in this suit] is a forgery consisting of replications of the details relating to the plaintiff's title; (ii) as the legitimate registered proprietor of the suit property, the plaintiff is entitled to the reliefs sought in the plaintiff in this suit; and (iii) the defendant is liable to bear costs of the suit.

Disposal orders

30. In the end, the plaintiff's suit and the defendant's purported counterclaim are disposed as follows:

- a) A declaration is hereby made that the plaintiff, Reuben Opile Wilson, as the legitimate proprietor, is entitled to exclusive and unimpeded right of possession and occupation of land Ref Number 209/11057 comprised in Grant Number IR 49914 situated in Villa Franca, Nairobi.*
- b) A permanent injunction is hereby issued restraining the defendant, her servants, agents and those claiming in her name, against entering, remaining on, or continuing to be in occupation or possession of the suit property, Land Reference Number 209/11057, Villa Franca, Nairobi.*
- c) An order of eviction is hereby issued against the defendant together with her agents/servants/tenants from the said property.*
- d) The defendant shall pay the plaintiff nominal damages of Kshs 500,000 for trespass to land.*
- e) To facilitate peaceful and smooth vacation from the suit property, by the defendant and her agents, there shall be a stay of execution or 60 days from today.*

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 1ST DAY OF FEBRUARY 2022

B M EBOSO

JUDGE

Given the serious criminal activities that have been disclosed in this case, I direct that the Registrar of the Court does furnish copies of this Judgment to the Director of Criminal Investigations and the Director of Public Prosecutions for their independent assessment of the criminal aspect of the matter and appropriate independent decisions.

B M EBOSO

JUDGE

In the Presence of: -

Mr Mbichire for the plaintiff

Linet Adhiambo the defendant

Court Assistant: Lucy Muthoni