



**Njoroge v Peter Waweru Guandaru (Sued as The Legal Representative Of
Simon Guandaru Ndegwa (Deceased)) & another (Environment & Land
Case 211 of 2013) [2022] KEELC 2270 (KLR) (2 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 2270 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 211 OF 2013**

**OA ANGOTE, J
JUNE 2, 2022**

BETWEEN

PAUL NJOROGE PLAINTIFF

AND

**PETER WAWERU GUANDARU (SUED AS THE LEGAL REPRESENTATIVE OF
SIMON GUANDARU NDEGWA (DECEASED)) 1ST DEFENDANT**

NAIROBI CITY COUNTY 2ND DEFENDANT

JUDGMENT

Introduction

1. In the Complaint dated 11th February, 2013, the Plaintiff averred that on 11th August, 1992, he was allocated by the 2nd Defendant plot number 226 Kahawa West (Phase II) (the suit property) vide a letter of allotment reference number CP & ARCH/005409 and that in acceptance of the said letter of allotment, he paid the stand premium and rent totaling Kshs 8,640.
2. The Plaintiff averred that the suit property was surveyed on 22nd December, 1999; that he was shown all the beacons which defined the boundaries of the suit property by an officer of the 2nd Defendant and was issued with a beacon certificate and that on 2nd February, 2013, he discovered that the 1st Defendant had trespassed on the suit property.
3. According to the Plaintiff, the suit property is still registered in his name; that it is not clear how the 2nd Defendant approved the development of the suit property and that the acts of trespass on the suit property by the 1st Defendant has occasioned him loss and damage.
4. The Plaintiff has prayed for a declaration that he is the lawful owner of plot number 226 Kahawa West (Phase II) and a permanent injunction restraining the Defendants from trespassing, constructing on,



selling, alienating, taking possession or in any manner interfering with the use and occupation of the suit property. The Plaintiff has also prayed for an order for the 1st Defendant to deliver vacant possession of the suit property to him.

5. The 1st Defendant filed a Defence in which he averred that he is the owner of the suit property having bought it in the year 2012 from one Mary W. Ndegwa and that the vendor purchased the suit property from one Peter Muchuki Muiruri.
6. It was averred in the Defence that upon purchase of the suit property, the 1st Defendant took possession of the land and constructed a septic tank thereon. According to the 1st Defendant's Defence, the Plaintiff has never taken possession of the suit property and that the Plaintiff does not have any known rights over the suit property.

Hearing and evidence

7. The matter proceeded for hearing on 23rd November, 2021 on which date the Plaintiff's Attorney, PW1, testified. The Defendants did not testify despite having been served with the hearing notice.
8. Pw1 informed the court that he is the Plaintiff's legal attorney; that on 11th August, 1992, the Plaintiff was allocated by the 2nd Defendant plot number 226 Kahawa West (Phase II) vide a letter of allotment reference number CP & ARCH/005409 and that the Plaintiff accepted the terms in the letter of allotment by paying the stand premium of Kshs 8,640.
9. According to PW1, at the time of the allocation; the suit property was unsurveyed; that the land was surveyed on 22nd December, 1999; that the Plaintiff was shown the beacons of the land by one Job Kaguongo and that he was issued with a beacon certificate.
10. It was the evidence of PW1 that when the Plaintiff visited the suit property on 2nd February, 2013, he was shocked to find trespassers on the land and that he later learnt that it was the 1st Defendant who had trespassed on the suit property.
11. PW1 finally testified that the 2nd Defendant continues to receive land rent and rates from the Plaintiff; that the unlawful actions of the 1st Defendant of trespassing on the suit property have occasioned the Plaintiff loss and damage and that the 1st Defendant has no right over the suit property.

Submissions

12. In his submissions, the Plaintiff's advocate submitted that the Nairobi City Council was tasked with the allocation of land in the City; and that the letter of allotment that was issued by the Nairobi City Council on 11th August 1992 required the Plaintiff to accept the terms of the allotment within 30 days which he did.
13. It was submitted that once the Plaintiff accepted the letter of allotment, paid the requisite charges and issued with the Beacon Certificate, the plot was no longer available for allocation to anyone else.
14. Counsel submitted that the Plaintiff has provided to the court with the value of the excavated murrum; that the Plaintiff has been unable to use the suit property since the year 2007 because of the said trespass by the 1st Defendant and that a sum of Kshs. 10,000,000 as damages for trespass is appropriate.



Analysis and determination

15. The Plaintiff's case is that he was allocated land known as plot number 226 Kahawa West Phase II vide a letter of allotment. According to the Plaintiff, he met all the conditions in the letter of allotment by paying the requisite amount of Kshs 8,640.
16. It is the Plaintiff's case that after making the requisite payments, the suit property was surveyed where after he was issued with a beacon certificate. However, in the year 2013, he noticed the 1st Defendant had trespassed on the land and was busy developing it. The Plaintiff is seeking for an order of permanent injunction and damages for trespass.
17. In support of his case, PW1 produced in evidence the Power of Attorney that was donated to him by the Plaintiff dated 29th May, 2015; the letter of allotment dated 11th August, 1992 issued to the Plaintiff by the then Nairobi City Council and the copy of the receipt evidencing the payment of the stand premium of Kshs 8,640 dated 11th August, 1992.
18. PW1 also produced in evidence the beacon certificate issued to the Plaintiff by the Nairobi City Council dated 22nd December, 1999 which was signed by the Deputy Director, land survey section.
19. In addition, the Plaintiff adduced in evidence, through his Attorney, the receipt dated 25th January, 2013 showing that he had paid Kshs 10,300 for the beacon certificate and survey fee for plot number 226 Kahawa West, Phase II and another receipt of the same date for Kshs 34,480 being payment for ground rent.
20. Lastly, the Plaintiff produced in evidence a letter dated 8th November, 2013 from the Nairobi City County. In the said letter, the Interim County Secretary stated that the suit property was allocated to the Plaintiff. The Defendants did not adduce any evidence in opposition to the Plaintiff's claim.
21. That being the case, the Plaintiff's evidence is uncontroverted. Indeed, there is no evidence before this court to show that the documents produced by the Plaintiff, and in particular the letter of allotment and the receipt evidencing payment of the stand premium, is a forgery or that the same was issued way after the 1st Defendant had been allocated the same land. In the circumstances, it is the finding of this court that the Plaintiff has proved on a balance of probabilities that the suit property belongs to him.
22. The Plaintiff adduced in evidence photographs showing the developments that the 1st Defendant has put on the land. That being the case, the Plaintiff's assertion that the 1st Defendant has trespassed on the suit property has been proved.
23. Considering that no evidence was adduced to show the use that the 1st Defendant has put the suit property in or the rent that the 1st Defendant is collecting from the suit property, it is the finding of this court that Kshs 1,000,000 is adequate for damages for trespass.
24. For those reasons, the Plaintiff's amended Plaint is allowed as follows;
 - a. A declaration be and is herein issued that the Plaintiff is the lawful owner of plot No. 206 Kahawa West (Phase II).
 - b. A permanent injunction be and is hereby issued restraining the Defendants by themselves, their agents, servants or employees from trespassing, constructing on, developing, selling alienating, transferring taking possession, remaining or in any way interfering with the Plaintiff's use and occupation of plot No. 226 Kahawa West (Phase II).
 - c. Kshs 1,000,000 to be paid by the 1st Defendant to the Plaintiff as damages for trespass.



d. The 1st Defendant to pay the costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 2ND DAY OF JUNE, 2022.

O. A. Angote

Judge

In the presence of;

Mr. Ndegwa for Plaintiff

No appearance for 1st and 2nd Defendant

Court Assistant – Nechesah

