



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE 23 OF 2017

SAIMA JEPKEMBOIPLAINTIFF

- VERSUS-

THE NATIONAL LAND COMMISSION & 6 OTHERS.....DEFENDANTS

JUDGEMENT

1. The Plaintiff filed this suit against the Defendants seeking the following reliefs :-

- a. An order of injunction do issue restraining the Defendants jointly and severally from processing, transferring, disposing, charging and/or releasing to any other party other than the Plaintiff the title and/or property known as LR No.209/13303 situated along Masaba Road-Nairobi and/or interfering with any records relating to the property including the part Development Plan (PDP) relating to the property.
- b. An order revoking any lease and/or title relating to LR No.209/13303 issued to any other party other than the Plaintiff.
- c. A declaration that the Plaintiff is the bonafide and legal allottee and owner of property known as LR No.209/13303 and of Deed Plan No.210434.
- d. An order directed to the 1st, 2nd and 3rd Defendants do issue ordering them to regularize the records relating to proprietorship of LR No.209/13303 and issue a lease and/ or title document to the Plaintiff within 60 days of the Judgement of Court.
- e. An order of injunction do issue restraining the 6th and 7th Defendants their servants and/or agents from transferring , leasing charging and/or dealing in any way with property known as LR No.209/13303 Masaba Road Nairobi County.
- f. Costs

2. The 6th and 7th Defendants were served through substituted service pursuant to leave of Court granted on 8th February 2017 but they neither entered appearance nor filed defence. The National Land Commission, the 1st Defendant herein and the Attorney General for 2nd to 5th Defendants did not file defence but were present during the formal proof hearing.

3. The Plaintiff testified that in 1994, she identified an open space along Masaba Road near Nyayo Stadium. As the plot was next to a Railway line, she wrote to Kenya Railways Corporation to confirm whether the plot was part of their land. The Kenya Railways wrote back and confirmed that their land extended 100 feet on either side of the railway line and that the said plot was not part of their land.

4. The Plaintiff then wrote to Nairobi City Council who also confirmed that they had no objection to the Planning of the area to create a plot. The Plaintiff then applied for allocation of the plot which was accepted initially as an un-surveyed plot. A Part Development Plan (PDP) of the area was created. The PDP was approved on 6th July 1995 by the Director of Physical Planning. On 1st April 1996, the Commissioner of Lands approved the PDP which was assigned No. 246. The plot which had been allocated was given LR No.209/13303 and the Plaintiff was given allotment letter No. 44805/VII.

5. The Plaintiff appealed against the valuation. Upon consideration of the appeal, she was given a new allotment letter under reference No.183350/5 dated 11th December 1996. The last allotment letter reference No. 183350 was given on 1st July 1999. This allotment letter superseded all the previous allotment letters. It was noted that there was a typing error in the last letter given to Plaintiff. The LR No. had been indicated as LR No.209/13308 instead of LR No. 209/13303. The error was rectified.

6. In December 1996, deed plan No. 210434 dated 9th December 1996 for LR No. 209/13303 was released to the Plaintiff and she has it to date. She wrote a letter of acceptance and prepared a cheque for payment but the correspondence file disappeared from the Ministry of Lands. After a follow up, a temporary file was opened. She was asked to avail her documents for verification. She availed the documents and was allowed to pay. She paid **Kshs.590,500/=**, on 29th June 2016 vide cheque No.113626 and was issued with receipt No.4446462.

7. The Plaintiff then embarked on the process of acquiring title deed. She visited various offices in a bid to have title processed but all was in vain. She even wrote complaint letters to the ministry of lands, National Lands Commission and Ethics and Anti-Corruption Commission but she was not assisted. She even used her nephew Mr Kiplagat Chebii to follow up but it was not possible.

8. The Plaintiff was later told in confidence by officers at Survey Office and Lands Office that the title she was pursuing had been issued to one Weston Kipkosgei Langat and that the same had been subsequently changed into the name of Faith Limo. She was further informed that title had been processed based on another deed plan No.210434 under F/R 308/183 which had been forwarded to survey of Kenya under day book No.3780 of 27th May 2016 bearing the name of Weston Kipkosgei Lagat and that the documents had been returned back to lands office under return to sender (RTS) as they were suspected to be fraudulent.

9. The Plaintiff was told that day book No. 3789 related to a power of attorney and not a deed plan. The Plaintiff therefore argues that there is no way two people could process title using one deed plan.

10. I have gone through the evidence adduced by the plaintiff and that of her witness Kiplagat Chebii. I have also considered the submissions by the Plaintiff. The Attorney General did not file any submissions. The only issue for determination is whether the Plaintiff has proved her case on a balance of probabilities. The Plaintiff followed every step in the process of allocation. The plot was available for allocation and it was indeed allocated to her. A deed plan was duly prepared after a PDP of the area was duly approved. What was remaining was processing of title in the Plaintiff's name.

11. This is one of the sad cases where people in authority turn a blind eye on the obvious without any explanation. The Plaintiff has done all that was possible in her powers. Filing of this case was as a last resort. The Chairman of the National Land Commission wrote on 7th September to the Senior Lands Officer describing the Plaintiffs case as a sad and serious case which should be investigated. It appears there is nothing which came out. The National Land Commission wrote another letter dated 18th October 2016 alluding to a second allocation. Again nothing seems to have come out of this.

12. The Plaintiff produced all documents in support of her case. The documents include letters of complaint to the Ethics and Anti-Corruption Commission which did not elicit any response. The records relating to the Plaintiff's plot disappeared from the Lands Office. The disappearance is typical of schemes to take away other people's plots. The disappearance of records from the Lands Office is the beginning of fraudulent activities. There are unnamed persons who moved to the suit property with heavy machinery. This was only stopped after the Plaintiff moved to Court and obtained an injunction.

13. The Plaintiff enumerated particulars of fraud in her Plaint. She has proved all the particulars through her evidence both oral and documentary. This evidence has not been controverted. I have no doubt that a fraudulent title has been processed. That title cannot supersede the allocation to the Plaintiff. This Court will not hesitate to cancel any title which may have been issued to any other person. In this regard I agree with the decision of Justice Onyancha in **Albert Mae Gacci Vs Attorney General & 4 others (2006) eKLR** where the Judge said that Courts will not hesitate to cancel title issued to grabbers.

14. As the evidence of the Plaintiff was not controverted, I find that the Plaintiff has proved her case on a balance of probabilities. I enter judgement for her against the Defendants in terms of prayers **(a), (b), (c), (d), (e)** and **(f)** of the Plaint dated 10th January 2017 and filed in Court on 12th January 2017.

Dated, signed and delivered at Nairobi on this 7th day of May 2020

E.O.OBAGA

JUDGE

In the virtual Presence of :-

Mr Ali for Plaintiff

Court Assistant: Hilda

E.O. OBAGA

JUDGE