



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 1273 OF 2013

MARY TERESA WACHIRA.....PLAINTIFF

=VERSUS=

EMBAKASI RANCHING COMOPANY LTD.....1ST DEFENDANT

FESTUS NJOGA KIMANI.....2ND DEFENDANT

RULING

1. The plaintiff has filed this suit against the defendants jointly and severally seeking:-

(a) A permanent injunction be issued against the defendants by themselves, agents, servants, employees or otherwise howsoever from entering, occupying, destroying, selling, transferring, alienating, or in any way dealing with or interfering with the proprietary rights, interests and possession enjoyed by the plaintiff over all that property identified as Plot Number P.5938 and/or the newly created and/or alleged Plot No. 1309 in Ruai Estate, Embakasi, within Nairobi County.

(b) An order of specific performance compelling the 1st defendant to forthwith process and issue the plaintiff with the title documents to the subject plot herein which the plaintiff has occupied since the year 1995 being plot number P. 5938 and/or the newly created and/or alleged Plot No.1309.

(c) An order of specific performance compelling the 1st defendant to show to the plaintiff here bonus plot no. P.5938B and issue the plaintiff with the title document thereto.

(d) The plaintiff be registered as the owner and proprietor of all that property identified as Plot Number P.5938 and/or Plot No. 1309 and the bonus plot thereto being Plot No. P.5938B all with Ruai Estate, Embakasi within Nairobi County.

(e) Damages for trespass.

(f) Costs of this suit.

(g) Any other relief the honourable court may deem fit and expedite to grant.

2. Upon being served with copies of summons to enter appearance and copies of plaint the defendant neglected to enter appearance and/or file defence within the prescribed period.

3. It is the plaintiff's case that in 1994, she purchased Plot No. P.5938 from Rose Wothaya Gachanja who was the original allottee of the said Plot. The 1st defendant approved the transaction and issued her with a new certificate No. 610. She was then allowed to take possession in the year 1995. She began tilling the same.

4. She was informed by the 1st defendant that title deed would be processed in due course. The 1st defendant surveyor, Mr. Mahinda confirmed to her the beacons for her Plot NO. P.5938. She fence the plot in 2004 and erected a site office in the year 2010. That in 2013, the 2nd defendant through the assistance of the 1st defendant threatened to invade the suit property in company of hired goons and forcefully occupied the same. They have vowed to destroy the plaintiff's property with a view of unlawfully deprive her of her occupation and use of the suit property.

5. In paragraph 31 of the plaint, the particulars of fraud and bad faith are given as:-

- (a) Showing the plaintiff the actual physical land on the ground in 1995 and confirming her occupation thereof only to purport to turn around some 17 years later to claim that the subject plot is not the one the plaintiff ought to occupy.*
- (b) Allowing the plaintiff to till her land, fence the same and even build a temporary site house therein only to collude with the 2nd defendant to destroy the plaintiff's development with the view of stealing the plaintiff's subject land herein.*
- (c) Irregularly and unlawfully aiding and cheering on the 2nd defendant in its attempts to deprive the plaintiff of her plot herein yet the 1st defendant is fully aware that the subject plot legitimately belongs to the plaintiff.*
- (d) Failing to process for the plaintiff her title document to the subject land in a bid to defraud the plaintiff of the same together with her developments therein.*
- (e) Assuring the plaintiff that the processing of the title document was in progress and that the same would be issued to the plaintiff in due course only to turn around and claim that the plaintiff ought to be given another plot.*
- (f) Refusing to show the plaintiff her bonus Plot No. P 5938B, and applying the same as a bait to force the plaintiff to surrender her subject plot herein despite being aware that the plaintiff is lawfully entitled to the bonus plot and has met all her obligations thereto.*

6. The plaintiff relied on her witness statement entirely and the list of documents dated 22nd October 2013 and filed in court on 24th October 2013. They are:- (a) An agreement for sale dated 2nd September 1994 produced as exhibit P1; (b) Certificate No. 810 in respect of Plot No.5938- Exhibit P 2; (c) Receipts – Exhibit P3 and (d) Photographs showing the defendant destruction – Exhibit P4.

7. The plaintiff's case is uncontroverted. I find that she has proved her case as against the defendant on a balance of probabilities. However I do not award any damages for trespass as the court was not guided on what loss the plaintiff has suffered.

8. Accordingly, judgment is entered in favour of the plaintiff as against the defendant fully and severally as follows:-

- (a) An order of permanent injunction be and is hereby issued restraining the defendants by themselves, agents, servants, employees or otherwise howsoever from entering, occupying, destroying, selling, transferring, alienating, or in any way dealing with or interfering with the proprietary rights, interests and possession enjoyed by the plaintiff over all that property identified as Plot Number P.5938 and/or the newly created and/or alleged Plot No. 1309 in Ruai Estate, Embakasi, within Nairobi County.*
- (b) An order of specific performance be and is hereby issued compelling the 1st defendant to forthwith process and issue the plaintiff with the title documents to the subject plot herein which the plaintiff has occupied since the year 1995 being plot number P. 5938 and/or the newly created and/or alleged Plot No.1309.*
- (c) An order of specific performance be and is hereby issued compelling the 1st defendant to show to the plaintiff here bonus Plot No. P.5938B and issue the plaintiff with the title document thereto.*
- (d) An order do issued that the plaintiff be registered as the owner and proprietor of all that property identified as Plot Number P.5938 and/or Plot No. 1309 and the bonus plot thereto being Plot No. P.5938B all with Ruai Estate, Embakasi within Nairobi County.*
- (e) The plaintiff shall have costs of the suit and interest.*

It is so ordered.

Dated, signed and delivered in Nairobi on this 11TH day of JULY 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendants

.....Court Assistant