

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 1295 OF 2013

JOSPHAT MAILU NDOLO.....PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI.....1ST DEFNDANT

MARY ASIYO.....2ND DEFENDANT

JUDGEMENT

1. The Plaintiff filed suit on 30/10/2013 seeking a declaration that plot number D5-36 Kayole (“the Suit Property”) belongs to him and that the purported repossession of this plot by the 1st Defendant and allocation to the 2nd Defendant was illegal. The Defendants were served but did not file any defence. The court entered interlocutory judgement for the Plaintiff on 22/5/2015. The 1st Defendant’s attempts to set aside the interlocutory judgement did not succeed.

2. The Plaintiff gave evidence. He was allocated suit plot by the 1st Defendant on or about March 1987 following an application he made to the 1st Defendant. He produced a copy of the 1st Defendant’s letter checked on 24/3/1987 together with the receipts as evidence of payments he made to the 1st Defendant on account of the plot. He also produced a copy of the booklet on payments for the Kayole Site and Service Scheme issued by the 1st Defendant under the scheme. The 1st Defendant issued a form to the Plaintiff dated 8/9/1987 confirming that he had received his building plans from the 1st Defendant’s Housing Development Department in respect of the Kayole Site and Service Scheme. He also produced documents from the 1st Defendant showing that he owned the suit plot.

3. The Plaintiff stated that he complied with the conditions of the allotment until 2008 when he was taken seriously ill and failed to make the monthly payments for the plot to the 1st Defendant. He visited the offices of the 1st Defendant in July 2008 with the intention of regularising his payments only to be informed that the Suit Property had been repossessed and allocated to another person. Later he learnt that the plot had been transferred to the 2nd Defendant on 29/3/2008. He visited the plot and found it was still vacant. He wrote a demand letter to the 1st Defendant on 14/7/2008 complaining about the repossession of his plot which did not elicit any response from the 1st Defendant. He produced the quotation prepared by Mwatati Construction Company in respect of the house he wished to develop on the Suit Property.

4. The Plaintiff maintained that he was not given any notice by the 1st Defendant before his plot was repossessed. He produced copies of the demand letters which the 1st Defendant sent to him on previous occasions when he fell into arrears on the monthly payments together with the receipts for settlement of the arrears.

5. The issue for determination is whether the 1st Defendant could repossess the suit plot from the Plaintiff and allocate it to the 2nd Defendant as it purported to do. The Plaintiff filed submissions which the court has considered. He submitted that he had a legitimate expectation that his interest in the Suit Property would be protected and that he would enjoy the benefits of the plot allotted to him by the 1st Defendant.

6. The Plaintiff proved that he was allocated the suit plot by the 1st Defendant and that he continued making monthly payments for the plot to the 1st Defendant. He proved that he would clear his outstanding arrears over time. The court agrees with the Plaintiff’s contention that the 1st Defendant could not have repossessed the suit land and purported to reallocate it to another party without giving him notice to settle the outstanding arrears. The 1st Defendant could not therefore have reallocated the suit plot to the 2nd Defendant without following due process.

7. The Plaintiff has proved his case on a balance of probabilities and the court grants prayers (a), (b) and (c) of the plaint dated 25/10/2013. The Plaintiff will have the costs of the suit to be borne by the 1st Defendant.

Dated and delivered at Nairobi this 5th day of November 2019

K.BOR

JUDGE

In the presence of: -

Ms. Esami holding brief for Kethi Kilonzo for the Plaintiff

No appearance for the Defendants

