



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. CASE NO. 19 OF 2001

LAWRENCE NJAU.....PLAINTIFF

VERSUS

GRACE WANJIKU KAIRU (the Legal Representative of the

Estate of JOSEPH KAIRU.....1ST DEFENDANT

EMBAKASI RANCHING COMPANY LTD.....2ND DEFENDANT

JUDGEMENT

1. The Plaintiff as a shareholder of the 2nd Defendant bought and was allocated plot numbers B210, B201 and B202 by the 2nd Defendant on 28/11/1982. He claims he was given possession of the plots in May 1985. On or about June 1996, the Plaintiff claims that the 1st Defendant's late husband, Joseph Kairu wrongfully trespassed onto his plot. The Plaintiff avers that the 2nd Defendant unlawfully subdivided his plot number B201 in 2008 to create two plots which were registered as Nairobi Block 105/7886 and 7887.

2. The Plaintiff seeks an order to evict the 1st Defendant from Nairobi Block 105/7886 and an order for the 2nd Defendant to transfer plot numbers Nairobi Block 105/7886 and 7887 which originally formed plot no. B201 to him. The Defendants denied the Plaintiff's claim and urged the court to dismiss the Plaintiff's suit.

3. The 1st Defendant, Joseph Kairu, averred in his Defence filed in court on 29/1/2001 that he had been allocated the suit plot plot as of right by the 2nd Defendant which he had developed. He denied the inference that he had occupied the Plaintiff's land.

4. The Plaintiff claims that the 2nd Defendant proceeded to subdivide his plot number B201 into two plots and transferred one of the plots created to the 1st Defendant despite the court order he obtained prohibiting the disposal of, transfer, alienation, charging or any other dealing with plot number B201.

5. The Plaintiff gave evidence. He bought shares in the 2nd Defendant in 1978. He was allocated plot numbers B201 and B202 on L.R. No. 10904/2 belonging to the 2nd Defendant on 28/11/1982. He paid survey fees of Kshs. 1000 on 16/12/1981. He paid the fees for processing of the title to the 2nd Defendant on 2/5/1985 and signed the application for title deed on 12/7/1993. He was given possession of plots B201 and B202 by the 2nd Defendant's surveyor, Augustine Muchiri in May 1985. According to him, the plots fronted Kangundo/Nairobi Road. He stated that plot number B201 measured 0. 285 0.337 in his witness statement.

6. On or about June 1996, he discovered that the 1st Defendant's husband, Joseph Kairu had trespassed onto plot B201 and built a structure on it. He requested him to vacate the plot but he refused. The 2nd Defendant subdivided plot number B201 into two plots which were given the numbers Nairobi Block 105/7886 and 7887 in 2008. Nairobi Block 105/7886 was transferred to the 1st Defendant whom he wishes to be evicted from the plot.

7. He produced a copies of his share certificate and the receipts issued by Gatuguta & Manek dated 27/9/75 for Kshs. 350 and Kshs. 200 and another one dated 18/10/75 for Kshs. 1650. The receipts which have the word "Cancelled' on them do not show any land reference number. He produced a copy of the receipt issued by the 2nd Defendant on 16/12/1981 for survey fees. The receipts issued by the 2nd Defendant on 9/7/84 for Kshs. 3500 and 2/5/85 have B201/202 written on them. The provisional letter of allotment issued by the 2nd Defendant to the Plaintiff on 28/11/82 was for plots B201 and B202.

8. He produced a sketch map showing plots B201, 202 next to Komarock Road. Plot G399 and G239 are adjacent to different roads. The court notes that there is no sequence followed in the numbering of the plots on this sketch. He produced other maps showing the plots as well as the approval to develop plot numbers B201 and 202 given by the 2nd Defendant on 30/5/2000. The maps and receipts do not show the sizes of plot numbers B201 and B202. The survey plans show parcel number 7886 measures 0.1932 ha, parcel while 7887 measures 0.1440 ha. The other parcels on the map range in measurement from 0.1035 to 1787 ha.

9. It was the Plaintiff's evidence that plot no. B201 measured 0.337 ha while B202 measured 0.1035 ha in size. He stated that the plots varied in size, with some being bigger than others. The Plaintiff stated that there was a structure put up on plot number 7887 but he did not know who occupied this plot. He denied that the 2nd Defendant wrote to him indicating that the plots allocated to him were bigger and that they would be subdivided and reallocated by the 2nd Defendant.

10. The Plaintiff called Nahashon Gitau Mwaura, another shareholder of the 2nd Defendant as a witness. He was allocated two plots. One of the plots he was allocated was later resurveyed and subdivided by the 2nd Defendant. It was the bigger plot. He claims he took up the matter with the 2nd Defendant and got his bigger plot back. He stated that the plots were approximately $\frac{1}{4}$ of an acre each. He maintained that his neighbours had bigger plots.

11. The 1st Defendant gave evidence. She was substituted as the Defendant in the suit when her husband died on 2/2/2001. Her late husband bought plot number G399 from the 2nd Defendant and was allocated a bonus plot being G399B in 1993 which is where they have built some business premises. She produced copies of receipts issued by Gatuguta & Manek to her husband in 1977; his share certificate issued by the 2nd Defendant together with the receipt for plot G399B dated 25/6/92 and the sketch map showing plot no. G399B. She also produced a consent that was recorded in **Milimani CMCCC No. 7321 of 1999** on 7/11/2000 between the 1st and 2nd Defendants the essence of which was that the 2nd Defendant would allow the 1st Defendant's husband to remain on plot number G399B and issue a title over this plot to him. The consent was recorded prior to the filing of this suit.

12. The 1st Defendant testified that they moved onto the suit plot in 1996 and that they were shown the beacons by the surveyor. Her husband was a shareholder of the 2nd Defendant. She maintained that the plot belonged to her as confirmed by the 2nd Defendant.

13. The 2nd Defendant called its surveyor Jack Kamau Wachira to testify on its behalf. According to the witness, one share in the 2nd Defendant entitled the member to a plot measuring $\frac{1}{4}$ an acre. He stated that plot number G399B measured $\frac{3}{4}$ of an acre and was subdivided by the 2nd Defendant with the resultant portions being 7887 and 7886 that were then allocated to the Plaintiff and the 1st Defendant respectively. He stated that plot number B201 became parcel 7887 while G399B became 7886.

14. Survey plan no. F/R No. 349/5 which the Plaintiff relied on shows that Plot numbers 7886 abuts a 12 metre road. There is another road to the right of this plot which measures 18 metres. It is not clear which of these roads is Kangundo Road that the Plaintiff claims plot no. B201 allocated to him abutted. It is also not clear whether it was plot no. B201 that became parcel number 7886 or it was G399B which had been allocated to the 1st Defendant.

15. The Plaintiff claims that his plot number B201 was subdivided to create parcels 7886 and 7887 but he did not sue the person who is occupying plot number 7887. From his evidence he was not certain whether this plot is occupied or if it remains vacant. The 2nd Defendant's witness stated that this plot was allocated to the Plaintiff after the bigger plot measuring $\frac{3}{4}$ was subdivided.

16. The Plaintiff did not produce any evidence to show the size of plot number B201, he only stated that it was bigger in size. The 2nd Defendant submitted that the only plots which were bigger than $\frac{1}{4}$ an acre were those reserved for public utility and that the plots allocated to members measured approximately $\frac{1}{4}$ acre each.

17. After considering the evidence and the submissions of parties, the court finds that the Plaintiff has failed to prove his case. It is dismissed with costs to the Defendants.

Dated at Nairobi this 5th day of October 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Thuita holding brief for Mr. Mwicigi Kinuthia for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendants