



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NUMBER 440 OF 2012

KENNETH KANG'ETHE CHEGE.....PLAINTIFF

=VERSUS=

ALEXANDER KISILU.....1ST DEFENDANT

Embakasi /Njiru United Self Help Group through

MESHACK AMBUKA.....2ND DEFENDANT

BERNARD MAINA.....3RD DEFENDANT

JUDGEMENT

1. By an amended Plaint dated 20th May 2017, the Plaintiff claimed the following reliefs from the Defendants.

a) A permanent injunction restraining the 1st Defendant either by himself, his agents or servants from trespassing on, developing or otherwise dealing with the Plaintiff's Plot No.275 within the Scheme of Embakasi /Njiru United Self Help Group Komarock Phase III Project Nairobi.

b) A permanent injunction restraining the Embakasi /Njiru United Self Help Group through the 2nd and 3rd Defendants and or any other officials and or servant and or agent or howsoever from selling, disposing off, alienating, transferring or in any other way interfering and or dealing with Plot No. 275 within the Scheme of Embakasi /Njiru United Self Help Group Komarock Phase III Project Nairobi.

c) A declaration that Plot No.275 within Scheme of Embakasi /Njiru United Self Help Group Komarock Phase III Project Nairobi belongs to the Plaintiff.

d) An order that Embakasi /Njiru United Self Help Group through the 2nd and 3rd Defendants and or any other official and or servant and or agent or howsoever transfer the said plot to the Plaintiff and issue him with the requisite documents of ownership.

e) The 1st Defendant vacates the said PI Plot No.275 within the scheme of Embakasi /Njiru United Self Help Group Komarock Phase III Nairobi and removes all structures he has built thereon at his cost and on failing to do so, the Plaintiff do remove the said structures at the 1s Defendant's cost.

f) The Defendants do jointly and severally reimburse and or compensate the Plaintiff at current market value the developments made on plot No.274.

g) General damages

h) Costs of the suit.

2. The 2nd and 3rd Defendants who had been duly served with summons to enter appearance neither entered appearance nor filed defence. The 1st Defendant who filed a defence was not present during the hearing despite his advocate having been present when the hearing date was taken and is the one who served the plaintiff's Advocate with a hearing notice. The hearing therefore proceeded ex-parte.

3. The plaintiff testified that he purchased plot No.275 (suit property) from John Mwaura who was a member of Embakasi /Njiru United Self-Help Group. He was issued with a share certificate and beacon certificate by the 2nd and 3rd Defendants who were officials of Embakasi/Njiru United Self Help Group. when the Plaintiff visited the suit property in 2008 he found that someone had fenced it off.

4. He proceeded to ask the 2nd and 3rd Defendants about the encroachment on the suit property. The 2nd and 3rd Defendant's informed him that there was a slight problem over the plot. The two advised him to construct on the adjacent plot No.274. When he started construction on plot No.274, he was summoned by the Chief of Kayole location who told him that he was constructing on someone's land. The Plaintiff was later served with court orders stopping him from developing plot No.274.

5. The plaintiff states that the 2nd and 3rd Defendant have refused to sort out the confusion. He stated that it is the 1st Defendant who has trespassed on to the suit property.

6. I have considered the evidence adduced by the plaintiff. This evidence is not controverted. The plaintiff produced certificate of ownership from Embakasi/Njiru United Self Help Group confirming that he is owner of the suit property. He also produced beacon certificate in respect of the suit property. A letter dated 3rd November 2010 signed by the 2nd Defendant confirms that the Plaintiff is the owner of the suit property and that the 1st Defendant had erroneously constructed on plot No.275.

7. From the evidence adduced, it is clear that the 1st Defendant constructed on the wrong plot. The 1st Defendant's plot is Plot No.276 but he has constructed on the suit property which belongs to the Plaintiff. I therefore find that the Plaintiff has proved his case on a balance of probabilities. As the Plaintiff has proved that he is entitled to the suit property and that the 1st Defendant has trespassed on to the same, I allow the Plaintiff's claim in terms of prayers (a), (b), (c), (d), (e), in addition to general damages for trespass which I assess at Kshs.500,000/= . The Plaintiff's claim for compensation for developments he undertook on plot No.274 is declined as the Plaintiff did not lead any evidence as to the developments which he made on the said plot. The Plaintiff shall have costs of this suit as prayed for in prayer (h) of the amended Plaint dated 20th May 2017.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 6TH DAY OF MAY 2021.

E.O.OBAGA

JUDGE

In the Virtual presence of:-

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Court Assistant: John

E. O.OBAGA

JUDGE