



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

CIVIL CASE NO. 51 OF 2014

LINUS EMOJONG ECHAKARA PLAINTIFF

= VERSUS =

ST. KEVIN BUSIA HILL ACADEMY 1ST DEFENDANT

COUNTY GOVERNMENT OF BUSIA2ND DEFENDANT

J U D G M E N T

1. The Plaintiff brought a suit against the defendants via a plaint dated 19th March 2014 which he later amended with leave of court. The amended plaint was filed in court on 16th March 2015 and prayed for the following orders;

- (a) The first defendant be evicted from Busia Township plot No. 404.**
- (b) The plaintiff be declared the sole owner of plot No. Busia/Township/404.**
- (c) Accounts be taken between the plaintiff and the 2nd defendant in regard to outstanding rates if any.**
- (d) Costs of the suit.**
- (e) Any other alternative relief which this Honourable Court may deem fit to grant.**

2. The 1st Defendant filed their defence on 22nd October 2015 where they denied the allegations raised by the plaintiff in the plaint. Specifically, the 1st defendant denied that the plaintiff was allocated the unsurveyed plot no.21 which upon survey was renamed to plot number Busia/Township/404. They denied that they entered into a verbal tenancy agreement with the plaintiff for use of the suit property as a playground or at all for a monthly rent of Kshs.20,000/= and they denying any breach of any agreement. They averred that the Plaintiff's title is a forgery and was illegally and unlawfully obtained.

3. They further averred without prejudice that they entered into a sale agreement with the plaintiff over the suit property for which they paid the plaintiff all the sums due and thus the plaintiff has breached the said agreement by failing to transfer the title of the purchased property to the 1st defendant. They pleaded the particulars of the plaintiff's breach of contract fraud and forgery:

- (a) Failing to obtain consent to transfer to title to the 1st Defendant and executing a transfer form of the suit parcel of land in favour of the 1st Defendant.*
- (b) Failing to process the title in good time hence guilty of laches*
- (c) Failing to follow due process in obtaining title*
- (d) Forgery of signatures*

4. The 2nd Defendant filed their defence on 26th September 2014 where they pleaded that they are entitled to the rates over the said plot No. Busia/Township/404 which is a leased property and in default of payment of the said rates. They stated that they are not a party to the ownership disputes between the parties and at the material time of the suit they were not responsible for the allocations of plots. The 2nd defendant has always availed the demand notices to the owners of the suit property and the plaintiff has not established any reasonable claim against them and as such should be dismissed with costs.

5. The matter came up for hearing on 23rd May 2018 with the plaintiff **PW1** giving his evidence in chief. He recalls that in 1991 he applied for a plot within Busia town which was a commercial plot and he was successful being allocated unsurveyed plot No. 21. He was given the letter of allotment dated 29/4/1991 produced as *Pex 1*. Subsequently he processed and was issued with a lease for the same plot now numbered as BUSIA MUNICIPALITY/PARCEL NO. 404 now produced the lease as *Pex 2*. Later he was issued with a certificate of lease on 15/6/2000 produced as *Pex 3*. He received a copy of letter from the Land Registrar which was addressed to the court dated 16/6/2000 which he produced as *Pex 4* and his response dated 10/2/2000 now produced as *Pex 5*.

6. The plaintiff continued in evidence that supposed to pay Kshs.1,200 annually as stated in the letter of allotment. That one time he paid Kshs.8,800 as annual rent. He produced the receipt of the payment as *Pex 6*. He received a demand notice dated 7/11/2012 asking him to pay rates amounting to Kshs.1,294,136 produced as *Pex 7* and which is exaggerated as it was only 16 years since he was given the plot yet the annual rate is Kshs.1,200. The plaintiff asked the court to order that accounts be taken so as to establish the true amount owed. He states that later the 2nd defendant issued another demand notice dated 14/11/2013 demanding a payment of Kshs.1,568,602.

7. It is his further evidence that he allowed the 1st Defendant to use suit plot as a playing ground paying thereto Kshs.20,000 per month. That the 1st defendant once made a payment by cheque of Kshs.180,000 dated 10/5/2010 as shown in the copy produced as *Pex 9* but which cheque was returned unpaid. After the cheque bounced, he asked the 1st defendant to vacate his plot via a letter dated 2/10/2013 produced as *Pex 10*. He never received a response from the 1st defendant and he never vacated the plot necessitating this suit. He concluded that now there is a wall and a road constructed on the plot. He wants his plot back the way it was in vacant possession.

8. **PW1** was cross-examined by the 1st defendant's advocate, Mr. Maube and stated that he only met the director of the 1st defendant on the day the cheque bounced. For all other things, he was dealing with the manager – Chrispin Nyongesa. The lease was verbal and temporary. He issued a letter to vacate the plot dated 22/10/2013 and delivered to the 1st defendant but the school did not stamp on it. He denied receipt of Kshs.250,000 in his account from the 1st defendant. On further cross-examination by the 2nd defendant's advocate Mr. Makokha **PW1** stated that the annual rent indicated in the allotment letter was Kshs.1,200. He did not know whether the conditions in paragraph 10 of the lease *Pex 2* were rates. These rates demanded by *Pex 8*. *Pex 7* is the demand for rates. He paid for annual rents.

9. The plaintiff closed their case and the matter was set for defence hearing on 10/10/2018. The hearing did not proceed and several other dates fixed before finally on 1/2/2021 when the defendants failed to appear despite being served. The defendants' case was marked as closed without either of them calling any evidence. Thereafter, the plaintiff and the 2nd defendant filed their submissions which this court has looked at and considered.

10. The plaintiff filed their submissions on 19th February 2021 and he stated that the plaintiff is entitled to the judgment of this suit as prayed for in the amended plaint as he had supported his claim with evidence and exhibits. The 2nd defendant's submissions filed on 11th March 2021 stated that the Plaintiff is statutorily barred from operating business more so on the leased property without paying rates to the 2nd defendant. The due obligation by the 2nd defendant to impose rates upon the plaintiff is expressly provided for under Article 209 of the Constitution of Kenya, 2010 and the County Governments Act No.17 of 2012 empowering the county government to impose taxes and charges. They further submitted that the actions of the plaintiff, his persistent indebtedness and default in paying rates due to the 2nd defendant, despite frequent reminders are reminiscent of the rule of equity.

11. The issues up for determination before this court are;

- (a) **Whether the plaintiff is the legal owner of the suit land**
- (b) **Whether the plaintiff has established a case against the 2nd defendant**
- (c) **Whether the plaintiff is entitled to the prayers sought in the amended plaint**

12. On the 1st issue, Section 24 of the Land Registration Act provides that;

- (a) ***The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.***

13. The plaintiff has stated that he applied for a plot in Busia and was allocated the suit land and issued with an allotment letter. He was subsequently issued with a lease after the payment of the requisite fees. He later entered into a verbal agreement with the 1st defendant to rent out the suit land to them for a consideration of Kshs.20,000 per month. The 1st defendant has claimed in their defence statement that he had entered into a sale agreement with the plaintiff for the suit land but did not file documents to support the averments. The plaintiff has declined knowledge of the advocate who allegedly handle the land transaction nor ever receiving any monies from the sale of the suit land. The plaintiff produced *Pex 11* which is the sworn affidavit of Chrispin Nyongesa who was the administrator of the 1st defendant, where Mr. Nyongesa stated at paragraph 6 thus:

- “THAT the said Linus Echakara and myself negotiated and agreed that the academy would lease the plot on payment of a monthly rent of Kshs.20,000/= effective from January 2007.”**

14. In the same exhibit *Pex 11*, in paragraph 7, the maker acknowledges that the monthly rent was not always paid regularly and sometimes accumulated for over a year. The plaintiff also produced *Pex 9* which was a bounced cheque the 1st defendant had made to the plaintiff. The 1st defendant did not also call any witnesses to prove their allegations that the plaintiff illegally and unlawfully acquired his title and also that

they had a sale agreement and that the plaintiff failed to transfer the title to them. The plaintiff put the 1st defendant on notice to vacate vide the letter dated 22/10/2013. Since the plaintiff's evidence is uncontroverted by the defendants, I do hold that the plaintiff has proved his case on the first issue of ownership of the suit land.

15. On the 2nd issue, the 2nd defendant has submitted that the plaintiff's suit is bad for misjoinder of causes of action and that they are constitutionally and statutorily bound to impose and collect rates and charges as prescribed. The plaintiff praying for taking of accounts as between the 2nd defendant and him in regard to the outstanding rates. The plaintiff has not denied that the 2nd defendant is constitutionally and statutorily bound to impose and collect rates. The dispute arises on the amount owed to the 2nd defendant. The plaintiff in his evidence stated that he does not deny owing the 2nd defendant but the demand is exaggerated. The annual fee as per both the plaintiff Kshs.1,200. The 2nd defendant did not lead any evidence to contest this figure nor lay any basis for demanding the sum of Kshs.1,568,602.

16. Section 17 of the Ratings Act provides the form in which the 2nd defendant should demand the dues payable to them. Section 16(3) of the Ratings Act breaks down how interest shall be charged on the amount owing to the rating authority. The Plaintiff has stated that it has been 16 years since he was given the plot and the amount demanded is not justified. I do find that the plaintiff has discharged his burden of proof that the amount demanded is unjustified thus making the plaintiff's prayer for accounts is justified.

17. I do hold that the plaintiff has not misjoined the 2nd defendant in the suit as the prayer against them is specific to taking of accounts on the amount owed as rates. The 2nd defendant is therefore rightfully enjoined to the suit. On the 3rd issue, I do find that the plaintiff is entitled to the prayers on the amended plaint. Specifically, I do order that the 1st defendant be evicted from Busia/Township/404. Secondly, the plaintiff is the sole owner of plot No. Busia/Township/404. Lastly, accounts to be taken between the plaintiff and the 2nd defendant in regard to outstanding rates. The plaintiff is awarded costs of this suit.

DATED, SIGNED & DELIVERED AT BUSIA THIS 23RD DAY OF JUNE, 2021.

A. OMOLLO

JUDGE