



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 2141 OF 2007**

**TOM ONYANGO OKETCH.....PLAINTIFF**

**=VERSUS=**

**HASSAN ALI HUSSEIN ..... 1<sup>ST</sup> DEFENDANT**

**AMINA HASSAN.....2<sup>ND</sup> DEFENDANT**

**JOHN GATOBU KIRIMANIA.....3<sup>RD</sup> DEFENDANT**

**CITY COUNCIL OF NAIROBI.....4<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

1. By a plaint dated 17<sup>th</sup> September 2007 the plaintiff has filed this suit against the defendants jointly and severally seeking:-

*(a) A declaration that the plaintiff is the sole and lawful proprietor of the suit property.*

*(b) A declaration that the purported allotment or transfer of the said plot to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants or anyone claiming under them, their occupation by themselves or by persons claiming title and/or trespass thereon is unlawful.*

*(c) A permanent mandatory injunction do issue against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants by itself, its servants, agents or otherwise howsoever from trespassing upon the plaintiff's land.*

*(d) Damages for trespass as against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.*

*(e) Damages against the 4<sup>th</sup> defendant.*

*(f) Costs of this suit.*

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

3. By a chamber summons dated 28<sup>th</sup> September 2008, the plaintiff sought leave to serve the 1<sup>st</sup> to 3<sup>rd</sup> defendants by way of substituted service through advertisement in the Daily Newspapers. The said leave was granted vide an order dated 21<sup>st</sup> November 2008.

4. There is an affidavit of service sworn by Dickens Mitawia Ouma, Advocate of the High Court sworn on the 12<sup>th</sup> June 2009. The copies of page 38 of the Standard Newspaper of 4<sup>th</sup> June 2009 and receipts of payments are attached.

5. Despite service they did not enter appearance and/or file defence. The matter was then set down for formal proof.

6. PW2, Tom Onyango Oketch the plaintiff adopted his witness statement dated 26<sup>th</sup> October 2020. He told the court that he was the owner of unregistered parcel of land known as Plot Number 114 situated in Jamhuri Phase II Nairobi. The same was allotted to him by the 4<sup>th</sup> defendant vide a letter of allotment dated 13<sup>th</sup> February 1992. He paid the stand premium and rent due. He was issued with a beacon

certificate dated 13<sup>th</sup> February 1992 whereby the 4<sup>th</sup> defendant certified having shown the plaintiff the beacons and size of the allotted plot.

7. PW1 further stated that he conducted a search at the Ministry of Lands and it emerged that the said parcel of land had been registered as Title No Nairobi/Block 63/667 and in the 1<sup>st</sup> – 3<sup>rd</sup> defendants' names. The same was done wrongfully, fraudulently and/or by mistake or misrepresentation as the plaintiff is the bonafide owner of the said piece of land. He prays that the parcel of land do revert to him.

8. In support of his case he relied on the documents in the list of documents dated 3<sup>rd</sup> February 2010 and a supplementary list of documents dated 26<sup>th</sup> October 2020. He produced the documents as exhibits P1 to P17 respectively. He produced a letter of allotment issued by the 4<sup>th</sup> defendant dated 13<sup>th</sup> February 1992 as exhibit P1. It shows that the stand premium was Kshs.9000/- plus annual rent of Kshs.1,800/-. The same was paid vide a receipt No TB 47541 dated 27<sup>th</sup> February 1992. He also produced a beacon certificate confirming the dimensions of the plot had been shown to him. He has also produced a certificate of official search showing that the parcel of land has been registered as Nairobi/Block 63/667 in the name of the 1<sup>st</sup> – 3<sup>rd</sup> defendants.

9. The plaintiff's case has not been controverted. It is not clear how his plot could have been transferred to the 1<sup>st</sup> – 3<sup>rd</sup> defendants. The same was unlawful. It was done through fraud, mistake and/or misrepresentation. The defendants neglected and or refused to attend court to defend their claims.

10. As things stand the plaintiff's case is unchallenged. I find that the plaintiff has proved his case on a balance of probabilities as against the defendants jointly and severally. The plaintiff seeks damages against the 4<sup>th</sup> defendant. The court was not guided on quantum. I award Kshs.150,000/- which I think is reasonable. I also award Kshs.300,000/- general damages for trespass as against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

11. Accordingly judgment is entered for the plaintiff as against the defendants jointly and severally as follows:-

*(a) That a declaration is hereby issued that the plaintiff is the sole and lawful proprietor of the suit property.*

*(b) That a declaration is hereby issued that the purported allotment or transfer of the said plot to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants or anyone claiming under their occupation by themselves or by persons claiming little and/or trespass thereon is unlawful.*

*(c) That a permanent injunction is hereby issued against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants by themselves, their servants, agents from trespassing upon the plaintiff's plot.*

*(d) General damages for trespass as against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendant Kshs.300,000/-.*

*(e) General damages as against the 4<sup>th</sup> defendant Kshs.150,000/-.*

*(f) That the plaintiff shall have costs of the suit and interest.*

It is so ordered.

**DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 17TH DAY OF JUNE 2021.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Okwach for the Plaintiff

No appearance for the 1<sup>st</sup> – 3<sup>rd</sup> Defendants

No appearance for the 4<sup>th</sup> Defendant

Phyllis - Court Assistant