



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC SUIT NO.645 OF 2017

PRISCA WANGUI MIANO..... PLAINTIFF

VERSUS

NYAKINYUA INVESTMENT LIMITED.....DEFENDANT

JUDGEMENT

By a **Plaint** dated 6th July 2017 and filed on 7th July 2017, the Plaintiff sought for Judgement against the Defendant for the following orders; -

a) That the Defendant be and is hereby compelled to issue to the Plaintiff title deed document in relation to Plot No.3683, measuring approximately ¼ of an acre and/or in the alternative the 1st Defendant be compelled to furnish the Plaintiff with all the requisite documents in relation to Plot No. 3683, measuring approximately ¼ of an acre to enable the Plaintiff to proceed and process the title document.

b) Costs of the suit.

In her statement of claim, the Plaintiff avers that on or about the 20th April 2005, she entered into an Agreement for Sale with Mary Wangari Njihia, for the purchase of Plot No. 3683, at a price of Kshs.160,000/=. That the portion of land had been previously purchased from the Defendant by Mary Wangari Njihia, and, the said Mary Wangari Njihia, was issued with Ballot Number 3683. She further averred that she conducted due diligence at the Defendant's office and confirmed that the said ballot number was genuine and the property was owned by Mary Wangari Njihia

It was her further contention that despite numerous demands to the Defendant to provide her with title documents in relation to **Plot No. 3683**, to enable her to follow up with the Land Registry, the Defendant has refused, failed and or neglected to adhere to her demands.

The suit is contested and the Defendant filed a Defence dated 21st May 2018 and denied all the allegations raised in the **Plaint** and contended that it has done all it could towards the process of issuance of the title to the Plaintiff. That the suit does not lie as against the Defendant as no civil liability has been pleaded against it and no orders have been sought against it capable of being granted.

The matter proceeded via *viva voce* evidence on the 14th December 2020,

Plaintiffs' case

PW1 – Mary Wangari Njihia, adopted her witness statement as part of her evidence. She testified that she sold the land and they exchanged the documents at Nyakinyua and Investment Co. Ltd and the Plaintiff paid for the title. She further testified that she sold the land to the Plaintiff and doesn't know if the title is in her name.

PW2- Prisca Wangui Miano testified that she is the Plaintiff in this case and that she sued Nyakinyua Investment Co. Ltd for not giving her the title document. She adopted her written statement as part of her evidence and her list of documents as part of her evidence too.

It was her testimony that she went to the Land Control Board and was given receipts. She further produced payment receipts, ballot and share certificate, plot ownership certificate and receipts as Exhibits 1-3, Demand letter was produced as Exhibit 4 and Sale Agreement was produced as Exhibit 5.

The Plaintiff closed her case.

Parties were requested to file written submissions. The Plaintiff filed her written submissions on 19th May 2021, through the Law Firm of Wakini Kiarie & Co. Advocates and submitted that the Plaintiff has proved her case on a balance of probabilities. She further submitted that the witness statement deposed by one Nduta Ndirangu amounted to an admission. She relied on the case of *Mary Awino Kwenyu v Lawrence Mmata Chore & Another (2002) eKLR* and Order 13 rule 2 of the Civil Procedure Rules 2010.

This Court has now carefully considered the pleadings herein and the annexures thereto. The Court has also examined the available evidence and the exhibits, produced in Court. The Court has also considered the written submissions, the cited authorities and the relevant provisions of law and finds that the issues for determination is ***whether the Plaintiff is entitled to the prayers sought.***

Though the Defendant filed a statement of Defence, it did not adduce any oral evidence in support of its claim and therefore all the averments in its Defence remains just mere allegations as averments in pleadings are not evidence.

In this instant therefore, the Plaintiff's evidence remained uncontroverted. See the case of *Shaneebal Limited...Vs...County Government of Machakos (2018)eKLR*, where the Court cited the case of *Janet Kaphiphe Ouma & Ano....Vs...Marie Stopes International (Kenya), Kisumu HCC No.68 of 2007*, where the Court held that:-

“In this matter apart from filing its statement of Defence, the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st Plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations.... Section 107 and 108 of the Evidence Act are clear that he who asserts or pleads must support the same.”

However, it is trite that he who alleges must proof See the **Evidence Act Section 107, which states; -**

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Further, uncontroverted evidence, is not automatic evidence, as the law places on the Plaintiff an obligation of proving her case.

The Plaintiff produced **receipts, ballot number, Share Certificate and receipts as Exhibits 1-3, Demand letter produced as Exhibit 4 and Sale Agreement produced as Exhibit 5.**

The Defendant on the other hand averred on **paragraph (5)** of its Statement of Defence that it has done all it could towards the process of issuance of the title to the Plaintiff. This implies that it had known of the issues befalling the Plaintiff and is thus estopped from denying any allegations as raised in its Statement of Defence.

Further, the Court has seen the Sale Agreement dated **20th April 2005**, between **Mary Wangari Njihia as the vendor and the Plaintiff as the**

Purchaser of Plot No.3683, and concludes that the same is legitimate and capable of enforcement under the Law of Contract.

The Court has also seen payment receipt dated 28/01/2015, with the Defendant's Letter head and demand letter dated 4/11/2016, **enquiring about the issuance of the title deed.** Therefore, this Court is thus satisfied that upon making the said payments, the Plaintiff became an allottee of **Plot 3683, having purchased the same from Mary Wangari Njihia**, and the same could not be allocated to anyone else.

Further, in the absence of any evidence to dispute ownership, the Court finds and holds that the Plaintiff is indeed the owner of **Plot No.3683, and ought to be issued with title deed as ownership of the said plot is not in dispute.**

Having now carefully considered the available evidence and the exhibits thereto, the written submissions, the cited authorities and the relevant provisions of law, the Court finds and holds that the Plaintiff has proved her case on the required standard of balance of probabilities.

For the above reasons the Court enters Judgment for the Plaintiff against the Defendant as prayed in the Plaintiff in terms of prayer (a) and (b).

It is so ordered.

Dated, signed and Delivered at Thika this 30th day of September, 2021.

L. GACHERU

JUDGE

