



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 516 OF 2015

FOZIA MULKI AHMED ABDULLAHI.....PLAINTIFF/APPLICANT

=VERSUS=

COUNTY GOVERNMENT OF NAIROBI.....1ST DEFENDANT

FATUMA IBRAHIM LIMO.....2ND DEFENDANT

JUDGEMENT

1. By a plaint dated 10th June 2015 and amended on 27th May 2019 the Plaintiff seeks judgment against the Defendants for:-

a) A declaration that the Plaintiff is the legal owner of all that parcel of land known as LR.NO.36/VII/581 (B3/3/A) New Pumwani Estate.

b) This Honourable court be pleased to issue an order of eviction against the Defendants whether by themselves, through their agents, servants, employees or anybody claiming through or under them jointly or individually from all that parcel of land known as LR.NO.36/VII/581 (B3/3/A) New Pumwani Estate.

c) This Honourable court be pleased to issue an order of permanent injunction restraining the Defendants whether by themselves, through their agents, servants, employees or anybody claiming through or under them either jointly or individually from transferring, selling, repossessing, leasing or in any manner interfering with the Plaintiff's quiet enjoyment, ownership and possession of all that parcel of land known as LR.NO.36/VII/581 (B3/3/A) New Pumwani Estate.

d) Costs and interest of the suit.

2. Upon being served with copies of plaint and summons to enter appearance the 1st defendant entered appearance through the firm of Musyoki Mogaka & Co. Advocates. It filed grounds of opposition dated 29th June 2015 but did not file a defence. The 2nd Defendant did not enter appearance and/or file any defence. She did not participate in these proceedings.

3. It is the Plaintiff's case that by way of a sale agreement dated 7th May 2013 she purchased the suit property known as LR NO 36/VII/581 (B3/3/A) New Pumwani Estate from the 2nd Defendant. That the suit property initially belonged to Fatuma Chepton Ali (Deceased) and upon her death it was transferred to her son Ibrahim Kibiyego Limo who died on 5th March 1997. Thereafter the 2nd Defendant was appointed the Administrator of his estate. She sold the suit property to the Plaintiff with the consent of all her children.

4. It is also the Plaintiff's case that it was a term of the agreement that she would pay the initial deposit of Kshs.250,000/- which would cater for the existing utility bills and transfer fees. She paid the deposit, settled the balance of the purchase price and took up possession of the suit property. She was however, evicted and the suit property leased out to a tenant despite the orders granted by this court on 31st May 2018.

5. As stated earlier the 1st Defendant, did not file any defence. It did not call any witnesses but tendered final written submissions.

Evidence of the Plaintiff

6. PW1 was the Plaintiff. She testified in court on 09/03/2021. She stated that she bought the suit property at kshs.2,500,000/= from the Defendant who had Grant of Letters of Administration of the estate of her late husband. She stated further that the 2nd Defendant's children consented to the

sale. She produced a copy of the sale agreement dated 07/05/2013 between herself and the 2nd Defendant, a copy of Grant Letters of Administration Intestate of the Estate of Kibiyego Limo issued on 24/06/2013 to the 2nd Defendant and an undated consent document titled consent to sell part of property **B 33/3/A (L.R NO. PUMWANI 36/VII/581- (Middle flat)** signed by the children of the 2nd Defendant.

7. She stated further that the county secretary approved transfer of the suit property according to the letter dated 07/10/2013 which she produced from Director, Social Services addressed to her stating that the County Secretary had given approval for transfer pursuant to the memo dated 17/07/2013 from director social services to interim county secretary seeking the secretary's approval for transfer of tenancy of the suit property among other properties in Nairobi.

8. She produced the letter dated 16/08/2013 from M/S Githaiga & Co. Advocates acting for the 2nd Defendant addressed to the director of housing and social services Nairobi requesting the director to transfer the suit property to the 2nd Defendant from her late husband's name and the letter dated 20th August 2013 authored by the 2nd Defendant's Advocates requesting that the suit property be transferred to the Plaintiff as she had bought it. She stated that she paid the balance of kshs.2, 200,000/= as follows; 200,000/= in cash, 50,000/= in cash and kshs2, 000,000/= by RTGS and the 2nd Defendant acknowledged receipt of the money. She produced the addendum agreement dated 10th October 2013.

9. It was her testimony that after paying the purchase price, she occupied the house with her family but after wards people came to harass them thus they did not enjoy peace she decided to file the suit and was granted orders restraining the defendants from interfering with the suit property. She annexed a form for application of hire of police officers and the receipt dated 2nd August 2008 for payment of hire of police to enforce the court orders issued on 31st May 2018. She stated that despite the orders, she was evicted from the suit property and it has now been rented out to the 2nd Defendant's tenant. She produced the letter dated 6th August 2018 from Shauri Moyo police station confirming that the plaintiff had been evicted. She asked that her prayers in the plaint be allowed and that the people occupying the house be evicted.

10. When cross examined, she stated that the 1st Defendant was not party to the agreement dated 7th May 2013 and the addendum dated 10th October 2013. When referred to the Grant of Letters of Administration, she stated that it was not a confirmed grant. She also stated that there is no transfer from the 2nd Defendant to herself but she has the letter from the Director of housing and social services dated 7th October 2013 but it does not have the letter head from Nairobi City County. She also stated that the 2nd Defendant is the one occupying her house but she sued the 1st Defendant because it has not given her a clearance certificate. When reexamined, she clarified that the 1st Defendant did not issue her with a clearance certificate yet the transfer was pegged on the said certificate. She also stated that she was evicted by the 2nd Defendant's family yet they did not object to her purchase of the suit property. With that testimony, the Plaintiff closed her case.

11. At the close of oral testimonies parties tendered written submissions.

The Plaintiff's Submissions

12. They are dated 19th May 2021 and identified the following issues for determination: -

a) Whether the Plaintiff is the rightful owner of the property known as LR NO.36/VII/581 (B3/3/A) New Pumwani Estate.

b) Whether the 1st Defendant acted illegally and is in breach of the Plaintiff's rights.

13. Counsel for the Plaintiff submitted that the Plaintiff had tendered irrefutable documentary evidence that she was the rightful owner of the suit property.

14. On whether the 1st Defendant was in breach of the Plaintiff's rights, counsel for the Plaintiff submitted that the 1st Defendant illegally evicted the Plaintiff from the suit property and allocated the property to a new tenant despite the dispute of ownership of the suit property subsisting in court. He also submitted that the 1st Defendant approved the transfer of the suit property thus it gave the Plaintiff a legitimate expectation to acquire and be allocated the suit property. He relied on the cases of **J.P Bansal V. State of Rajasthan & Another. Appeal (civil) 5982 of 2001** and on **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR.**

15. He also submitted that having transferred the suit property to the Plaintiff, it was the 1st Defendant's responsibility to subsequently issue the Plaintiff with title document in confirmation of having acquired the suit property and there was no documentary evidence tendered to the contrary. He relied on the case of **Hassan Mohammed Haji v. Mohamed Keynan & Another [2019] eKLR.**

The 1st Defendant's Submissions

16. They are dated 26th May 2021. They identified the issue for determination to be whether the Plaintiff has a cause of action against the 1st Defendant. It submitted that there was no wrong doing on the part of the 2nd Defendant thus there was no cause of action against it. The submitted further that the Plaintiff's own testimony on oath was that she was being harassed she did not know and that it is the 2nd Defendant who evicted her and inferred that if there is a dispute between the Plaintiff and the 2nd Defendant, then the 1st Defendant should not be dragged in the dispute. He relied on **D.T Dobbie Kenya Co. Ltd V. Joseph Mbaria Muchina.** He faulted the plaintiff for claiming that she is being frustrated by the 1st Defendant for failing to issue her with a clearance certificate yet she did not plead any frustrations and lack of clearance in her plaint.

17. He also submitted that the 2nd Defendant had already issued the Plaintiff with approval vide the letter dated 7th October 2023 subject to her obtaining clearance from the Chief Revenue Officer showing that there are no outstanding charges against the suit property. He added that the 1st Defendant is not claiming ownership of the suit property thus the prayers sought cannot obtain against it.

18. I have considered the pleadings and the evidence on record. I have also considered the written submissions filed on behalf of the Plaintiff and the 1st Defendant, and the authorities cited. The issues for determination are:-

(i) Whether the Plaintiff is the rightful owner of the suit property LR NO 36/VII/581(B3/3/A) New Pumwani Estate.

(ii) Is the Plaintiff entitled to the reliefs sought?

(iii) Who should bear costs of this suit?

19. As stated earlier the 1st Defendant did not file any defence to the Plaintiff's claim. It did not call any witnesses. The 2nd Defendant neither entered appearance nor filed a defence. She did not participate in these proceedings. It is safe to say the Plaintiff's case is uncontroverted.

20. The Plaintiff relies on the sale agreement dated 7th May 2013. The same is between herself and Fatuma Ibrahim Limo. The Purchase price is Kshs.2,500,000/-.

Clause "B" provides that:

"Kenya shillings two hundred and fifty thousand (Kshs.250,000) shall be paid through a bankers cheque NO 089407 in the name of Mary Ngechi & Company. The said amount shall be utilized to pay the following utility bills:-

(i) Water Kshs.80,000/-

(ii) Trasfer fees at the County of Nairobi- Kshs.22,500/-

(iii) Rates- Kshs.700/-

Clause 'C' provides that:-

"The purchaser shall also pay through the above referenced banker's cheque the legal fees amounting to Kshs.30,000/- (thirty thousand shillings) and transfer fees owed to the County of Nairobi amounting to Kshs.7,500/-. The balance of the money shall be given to the purchaser".

21. The Plaintiff complied with Clause 'B' of the agreement. The Plaintiff produced Bankers Cheque dated 7th May 2013 drawn in favour of Mary Ngechi & Company Advocates for Kshs.287,500/-.

22. In compliance with clause 'C' of the agreement of sale the Plaintiff did electronic transfer of Kshs.2,000,000/- in favour of the 2nd Defendant on 10th October 2013 to her A/C NO 113xxxxxx at Kenya Commercial Bank. There is an Addendum Agreement dated 10th October 2013 in which the 2nd Defendant also acknowledged receipt of Kshs.200,000/- in cash. Under clause 2 of this Addendum Agreement the Plaintiff was to take possession of the house immediately. The second agreement is duly signed by the 2nd Defendant.

23. The 2nd Defendant was the administrator of the Estate of Ibrahim Kibiyego Limo as per the Grant of Letters of Administration intestate issued on 24th June 2013. There is a consent signed by all her children though it is undated. I find that the 2nd Defendant had capacity to sell the suit property to the Plaintiff.

24. There is an approval by the Acting Director Social Services and Housing dated 7th October 2013. The same gives approval for the suit property to be transferred to the Plaintiff. What was pending is the clearance certificate from the Chief Revenue Officer. This means the 1st Defendant recognized the Plaintiff as the owner of the suit property.

25. I find that the Plaintiff complied with all the terms of the sale agreement and is entitled to the orders sought. The 2nd Defendant is in breach of the said agreement. On the 20th July 2018 this court issued orders which the 2nd Defendant disobeyed by evicting the Plaintiff from the suit property. She has since rented it out to tenants. The Plaintiff was clear in her evidence that it is not the 1st Defendant who evicted her from the suit property.

26. She however, explained that the 1st Defendant is yet to issue her with a clearance certificate. I find that she did not err in enjoining the 1st Defendant to this suit. The 1st Defendant was a necessary party for the resolution of the issues in this case.

27. All in all, I find that the Plaintiff's case has not been challenged. I find that the Plaintiff has proved her case on a balance of probabilities as against the Defendants.

28. I enter judgment in favour of the Plaintiff as against the Defendants as follows:-

(a) That a declaration is hereby issued that the Plaintiff is the legal owner of all that parcel of land known as LR NO 36/VII/581 (B3/3/A) New Pumwani Estate.

(b) That an order of eviction is hereby issued against the 2nd Defendant whether by herself, through her agents, servants, employees or anybody claiming through her, under her, from all that parcel of land known as LR NO 36/VII/581 (B3/3/A) New Pumwani Estate.

(c) That an order of permanent injunction is hereby issued restraining the Defendants whether by themselves, through their agents, servants, employees or anybody claiming through or under them jointly or individually from transferring, selling, repossessing, leasing or in any manner interfering with the Plaintiff's quiet enjoyment, ownership and possession of all that parcel of land known as LR NO 36/VII/581(B3/3/A) New Pumwani Estate.

(d) That costs of this suit shall be borne by the 2nd Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 14TH DAY OF OCTOBER 2021.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Omondi for the Plaintiff

Mr. Mokuu for the 1st Defendant

No appearance for the 2nd Defendant

Steve - Court Assistant