



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 89 OF 2013

ROBERT MURITHI NDEGWA.....PLAINTIFF

-VERSUS-

DANDORA JUA KALI ASSOCIATION.....DEFENDANT

JUDGMENT

INTRODUCTION

1. The Plaintiff has filed the subject suit vide Plaintiff dated the 17th January 2013, and in respect of which same seeks the following Reliefs;

*I. Declaration that the Plaintiff is registered as owner of Dandora Jua Kali Association **Plots nos. Block-6-261 and Block-6-259.***

*II. Permanent Injunction restraining the Defendant, the third parties, squatters and/or trespassers under its directions, its agents, servants and/or employees or in any manner howsoever from, trespassing entering, remaining on creating nuisance on or in any way dealing with and/or interfering with the Plaintiff's proprietorship interests and/or rights of quit possession, occupation and enjoyment of **land Reference Block-6-261 and Block-6-259** and/or interfering with the Plaintiff's rights occupation and enjoyment thereof.*

III. Costs of and incidental to the suit and interests at court rates

IV. Any other remedy as the honourable court may deem fit and applicable in the circumstances.

2. Following the filing of the subject suit, the Defendant herein entered appearance on the 14th February 2013, and also filed a statement of defense and counter claim, in respect of which the defendant disputed the claim by the Plaintiff herein.

3. Subsequently, following the close of the pleadings, the subject matter was fixed and/or listed for hearing on various dates including on the 28th September 2021, when the matter was heard, albeit in the absence of the Defendant, who had been duly served and was thus aware of the scheduled hearing date.

Evidence by the parties

Plaintiff's case

4. The Plaintiff herein testified as PW1, whereupon same informed the court that he entered into a lawful sale agreement with one Antony Njoroge Njoki, on the 14th August 2004, whereupon the latter sold to and in favor of the Plaintiff two plots namely, *Plots Numbers 291 and 293*, respectively.

5. It was the Plaintiff's further testimony that the plots in question initially belonged to and were owned by Mali Mungu Jua Kali Association Development Project and that it is the association which had granted to and in favor Antony Njoroge Njoki, the subject Plots.

6. It was the Plaintiff's further testimony that upon the purchase and/or acquisition of the suit plots, the vendor, namely Antony Njoroge Njoki, introduced the Plaintiff to the Defendant herein, who were the successors of Mali Mungu Jua Kali Association Development Project. In this regard, the Plaintiff testified that the Defendant accepted and ratified the sale of the suit plot.

7. On the other hand, the Plaintiff further testified that the suit plots, which were initially known as plots no's 291 and 293 respectively, were later renumbered and became known as, *Block-5-PL210 and 211, respectively*.
8. The Plaintiff further testified that upon the acquisition of the plots and following the payments of the requisite charges to the Defendant, the Defendant herein thereafter proceeded to and issued the Plaintiff with Share certificate numbers 325 and 326, respectively, which therefore confirmed and/or authenticated that the Plaintiff is the lawful and registered owner of the suit plots.
9. Nevertheless, the Plaintiff further testified that after the acquisition of the suit plots, same entered onto and took possession of the suit plots, wherein he enjoyed quite possession up to and including December 2012, when the Defendants' agents and/or servants started to interfere with his (Plaintiff) occupation and use of the suit property.
10. The Plaintiff further testified that as a result of the interruptions or interferences, with his use, same approached the Defendant herein and demanded cassation of the offensive activities.
11. However, the Plaintiff further testified that despite his plea to the Defendant to stop and/or avert the offensive activities, the defendant threatened to overrun the Plaintiff's plots and to repossess same.
12. Arising from the threats by and/or at the instance of the Defendant, the Plaintiff testified that he was thus constrained to file the subject suit as against the Defendant herein.
13. In support of his case, the Plaintiff adopted his witness statement dated the 17th January 2013, as well as the Bundle of Documents, at the foot of the List of Documents dated the 17th January 2013.
14. On the other hand, the Plaintiff called one witness, namely, Felista Waithera Murithii, who testified PW2.
15. According to PW2, same is the wife of the Plaintiff and that at the time the Plaintiff was purchasing the suit plots, same was present and she thus witnessed the sale Transaction, as well as the sale Agreement.
16. It was her further testimony that after the sale agreement, the Plaintiff and herself were allowed entry onto and upon the suit property, for purposes of carrying out development.
17. Nevertheless, the witness further testified that despite entering upon and taking possession of the suit plots, the Defendant herein was not willing to respect the Plaintiff's title and therefore same commenced activities, which were meant to harass the Plaintiff, so as to force the Plaintiff to vacate the suit property.
18. Finally, PW2 adopted her written statement, which was similarly dated the 17th January 2013, though filed on the 18th January 2013.
19. Suffice it to note, that even though the Defendant was duly served, same did not attend and/or participate in the hearing. Consequently, the evidence of PW1 and PW2, were never shaken, challenged and/or controverted.

Defendant's case

20. Upon being served with the Plaint and summons to enter appearance, the defendant herein duly entered appearance and filed a statement of defense and counter claim against the plaintiff's claim.
21. Nevertheless, despite the filing the statement of defense and counter claim, the defendant herein, neither attended court nor adduced any evidence.
22. In the premises, the Defense case, as well as counter claim was closed without any evidence having been tendered and/or availed.

Submissions

23. Following the close of the Plaintiff's case as well as the defense case, the court ordered and/or directed that the plaintiff file written submissions and in this regard the written submissions were duly filed. For clarity, same are on record and shall be given Due attention and/or consideration.

Issues for determination

24. Having reviewed and/or evaluated the Plaint dated the 17th January 2013, the witness statement filed by the Plaintiff as well as PW2 and coupled with oral evidence, tendered before the court and upon considering the contents of the statement of Defence and counter claim, **I am of the humble view that the following issues arise for consideration:**

I. Whether the plaintiff lawfully purchased and/or acquired the suit plots.

II. Whether the Plaintiff is entitled to the orders of permanent injunction and or quiet possession in respect of the suit plots.

Analysis and determination

Issue number 1

25. On or about the 29th July 2002, the Plaintiff and one Antony Njoroge Njoki entered into and executed a plot sale agreement whereby the vendor sold to and in favor of the Plaintiff two plots, which were initially A-556-MM-464 and A-557-MM-469, respectively.
26. On the other hand, the Plaintiff further testified that after the sale and purchase of the two plots which are referred to A-556-MM-464 and A-557-MM-469, respectively, same was taken to the Defendant association, which was previously known as Kayole Junction Housing Scheme, with a view to confirming and approving of same.
27. The Plaintiff further averred that following his introduction to the Defendant's predecessor, the Defendant's predecessor proceeded to and generated another agreement dated the 14th August 2004, whereby the Defendant's predecessor authenticated and/or approved of the sale and transfer of the suit plots to and in favor of the Plaintiff.
28. Subsequently, the Defendant's predecessor proceeded to and issued in favor of the Plaintiff herein two certificates, Number 325 and 326, respectively, whereby the Defendant's predecessor confirmed that the Plaintiff was thus the owner of plots Numbers, *Block-6-261 and Block-6-259*, respectively.
29. Other than the approval and the issuance of the share certificate by the Defendant's predecessor, it is also important to note that even the current Defendant also proceeded to and issued in favor of the Plaintiff Membership Certificate, which confirmed that the Plaintiff herein was indeed recognized as the owner of the said suit plots. For clarity, the said Membership cards were produced before the honourable court as exhibit P1.
30. From the foregoing, it is apparent that after the Plaintiff bought and/or purchased, what now constitutes the suit plots, the sale and/or the acquisition of the suit plots, was duly approved and/or ratified by the Defendant herein, who proceeded to and issued the Membership certificate to the Plaintiff.
31. In the premises, the Defendant herein cannot turn her back and deny that the Plaintiff is the lawful owner and/or proprietor of the suit plots.
32. Clearly, the Defendant herein must be bound by her Representation and/or promises, which were made to and in favor of the plaintiff. Same must not be allowed to run away and/or renege from the Representations made.
33. It is my further holding that the Defendants herein is estopped from challenging and/or disputing the Plaintiff's title by dint of the Doctrine of Estoppel.
34. In support of the foregoing observation, I adopt and reiterate the position of the law in the decision in the case of **Carol Construction Engineers Limited & another v National Bank of Kenya [2021] eKLR**, where it was stated as hereunder;

“This is, most conservatively stated, the law as it exists in Kenya today. It might be arguable that indeed the law has inched closer to the American position where a promissory estoppel can found a cause of action – but at worst – the doctrine of equitable estoppel prevents a party from acting inconsistently with a promise the party has made if that promise or representation had the effect of inducing another party to reasonably rely on it to that other party's detriment.”

35. In my humble view, the Defendant herein having approved of and ratified the sale of the suit plots to and/ or in favor of the Plaintiff and having ventured to issue the Membership certificate, whose purpose was clear cut, the Defendant cannot now be heard to deny and/or dispute the Plaintiff's title.

Issue number 2

36. The plaintiff herein bought the suit plots from one, Antony Njoroge Njoki, who had been allocated the suit plots, by the Defendant's predecessor.
37. It is obvious, that at the time of the purchase of the suit plots, the vendor warranted that the plaintiff shall acquire and/or be entitled to clean title and quiet possession, upon payment of the purchase price.
38. Certainly, after paying the full purchase price, the plaintiff herein accrued and/or attracted lawful and legitimate rights over the suit plots, which is thus deserving of protection.
39. In any event, the Defendant herein has herself confirmed and/or authenticated the Plaintiff's rights of ownership and same went ahead to issue Membership cards to the plaintiff.
40. Certainly, the issuance the membership cards to and/or in favor of the Plaintiff was testament to the fact that the Defendant was ready to respect, protect and vindicate the Plaintiff's rights over the suit plots.
41. Having created the impression and/or otherwise given a promise to respect the Plaintiff's Ownership of the suit plots, the Defendant

cannot now seek to be the aggressor.

42. Be that as it may, where the Defendant now becomes the aggressor and seeks to disturb the Plaintiff's rights to quiet possession over and in respect to the suit plots, then the Plaintiff herein is entitled to the Orders of Permanent injunction.

43. In the premises, unless an order of permanent injunction is so granted, the Defendant herein shall overrun the Plaintiff's rights and ownership of the two plots and would most probably, alienate same to Third Parties. In this regard, the Plaintiff will thereby be permanently deprived of ownership rights.

44. In a nutshell, the Plaintiff has established and/or otherwise laid down a basis for the grant of the orders of permanent injunction.

Final disposition

45. From the foregoing analysis, the Plaintiff has proved his case on a balance of probabilities and in this regard, I now make the following dispositive orders;

*I. Declaration be and is hereby issued that the Plaintiff is the registered as owner of Dandora Jua Kali Association **Plots nos. Block-6-261 and Block-6-259.***

II. An order of permanent injunction be and is hereby issued restraining the Defendant, the third parties, squatters and/or trespassers under its directions, its agents, servants and/or employees or in any manner howsoever from, trespassing entering, remaining on creating nuisance on or in any way dealing with and/or interfering with the Plaintiff's proprietorship interests and/or rights of quiet possession, occupation and enjoyment of Land Reference. Block-6-261 and Block-6-259 and/or interfering with the Plaintiff's rights occupation and enjoyment thereof.

III. The Defendant's counter claim be and is hereby Dismissed.

IV. The Plaintiff be and is hereby awarded costs of the suit as well as the Counter claim

46. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS DAY OF NOVEMBER 2021.

HON. JUSTICE OGUTTU MBOYA,

JUDGE.

ENVIROMENT AND LAND COURT,

MILIMANI.

In the Presence of;

June Nafula Court Assistant

Ms Kalwa for the Plaintiff.

N/A for the Defendant.