



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 219 OF 2016 (OS)

AGNES WANGU MUNA.....PLAINTIFF

VERSUS

STEPHEN MWANGI.....1ST DEFENDANT

NAIROBI CITY COUNCIL.....2ND DEFENDANT

JUDGMENT

1. This suit was commenced through an originating summons dated 7th March 2016 where the Plaintiff sought the following orders: *a temporary injunction pending the hearing and determination of the suit against the 1st Defendant from interfering with the Plaintiff's quiet possession of Plot No. A3-220 Kayole Site and Service Scheme; the Defendant to be ordered to table before this court all the documents in his possessions relating to ownership of Plot No. A3-220 Kayole Site and Service Scheme; and a declaration that Plot No. A3-220 Kayole Site and Service Scheme belonged to her.*

2. Through her sworn affidavit dated 7th March 2016, the Plaintiff stated that she bought the suit property on 3rd October 2014 from Grace Wambui Muriuki vide a sale agreement dated on the even day. The said property had been sold to Grace Wambui by one Duncan Mwangi Muchiri on 20th November 2001. That on 5th February 2015, she applied for a search in respect of the suit plot, whereby she was issued with a certificate of search dated 24th March 2015 indicating that the plot of land belonged to Duncan Muchiri. She was also issued with a beacon certificate. She has been paying land rates and had also made payments for transfer, grant, beacon and survey fee and applied for a transfer of the suit land into her name.

3. In her viva voce evidence on 2nd November 2021 she reiterated what she had averred in the affidavit and testified that she was ready to develop the suit but one day when she visited the site, some young men started throwing stones at her claiming that they were the owners of the land. She reported the matter at Kayole Police Station. She stated that the police called the Defendant and asked him to produce his documents to the land, but he had none and he was given a warning.

4. The Plaintiff later learnt that the Defendant belonged to the Mungiki sect and that he had lodged a caution at the City Council offices in Dandora. This is what prompted the Plaintiff to file the suit.

5. In support of her case, the Plaintiff produced 15 documents as her exhibits.

6. On cross examination by counsel for the 2nd Defendant, the Plaintiff stated that she learnt about the caution placed against the property when she went to the City Council offices to effect a transfer. She noted that the City Council of Nairobi had been very co-operative and her claim was against the 1st Defendant- Stephen.

7. On re-examination the Plaintiff stated that she was advised by the County Council to get a court order for the caution to be removed.

8. The 1st Defendant did not enter appearance despite being served by substituted service on the Daily Nation Newspaper on 16th October 2018.

9. The 2nd Defendant in their affidavit dated 16th November 2021 sworn by the County Surveyor Mr. Geoffrey Cheruiyot stated that their records showed that Plot Number A3-220 Kayole Site & Service Scheme was registered under Duncan M. Muchiri. He entered into a sale agreement with Grace Wambui Muriuki and donated Power of Attorney to her and the Power of Attorney was served on 27th September 2002 at the City County offices. He also indicated that Grace then entered into a sale agreement with Agnes Wangu Muna (the Plaintiff) and

donated her power of Attorney to her on 3rd October 2014 and the same was served upon the office on 27th October 2014. However, the process of transferring the land from Grace to Agnes was not completed because they received a letter from the Directorate of Criminal Investigations, Kayole office concerning the ownership of the said property. He added that the 1st Defendant was not in their records.

Analysis and Determination

10. This court finds that the issue for determination is ***whether the suit property Plot No. A3-220 Kayole Site and Service Scheme belongs to the Plaintiff.***

11. The history of how the Plaintiff acquired the suit property as deponed in her affidavit has been corroborated by the 2nd defendant's surveyor. That the Plaintiff bought the suit land from Garce Wambui Muriuki who in turn had bought the land from Duncan Mwangi Muchiri. It appears that the only reason as to why a transfer was not effected into her name was because a caveat had been put against the said property by the 1st Defendant.

12. In **MOTEX KNITWEAR LIMITED V GOPITEX KNITWEAR MILLS LIMITED [2009] eKLR**, the court agreed with the preposition of law advanced in **AUTAR SINGH BAHRA AND ANOTHER VS. RAJU GOVINDJL, HCCC NO. 548 OF 1998** (unreported) where the Hon. Justice Mbaluto stated at page 4 paragraph 4 as follows:

“Although the Defendant has denied liability in an amended Defence and counterclaim, no witness was called to give evidence on his behalf. That means that not only does the Defence rendered by the 1st Plaintiff in support of the Plaintiff's case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail.”

13. This is a situation whereby the position of the 2nd defendant amounts to an admission of Plaintiffs claim. Considering that the 2nd Defendant appears to be the custodian of the ownership records in relation to the suit property, and taking into account that the 1st Defendant did not defend the suit, then I am inclined to allow the plaintiff's suit in the following terms;

- 1. A declaration is hereby issued that the Plaintiff- AGNES WANGU MUNA is the owner of the plot no. A3-220 Kayole Site and Service.**
- 2. An order is hereby issued for removal of any restriction or caveat that is lodged on the plot no. A3-220 Kayole site and service.**
- 3. An order is hereby issued directing the 2nd defendant to transfer the plot A3-220 Kayole site and service into Plaintiffs name in so far as their records are concerned.**
- 4. An order is hereby issued restraining 1st defendant from dealing with the suit land A3-220 Kayole site and service in any manner.**
- 5. Each party is directed to bear their own costs of the suit.**

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF DECEMBER, 2021 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Wachira for the Plaintiff

Kabiru for Wafula for the 2nd Defendant

Court Assistant: Eddel Barasa