



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. CASE NO. 724 OF 2016

MICHAEL KINYUA.....PLAINTIFF

VERSUS

SIMON CHEGE RUKUA.....1 ST DEFENDANT

WALLACE MWARAGE.....2 ND DEFENDANT

SALIM TUKUTU MAEMA.....3 RD DEFENDANT

(Sued in their capacity as Officials of Ruai Chokaa Housing Scheme)

JAMES NYAGA.....4 TH DEFENDANT

JUDGMENT

1. The plaintiff brought this suit on 29/6/2016 through a plaint of even date. An amended plaint dated 28/2/2018 was filed on 9/3/2018. He sought the following orders:

a) A declaration that the plaintiff is the bonafide owner of Plot No G 3-05 situate in Ruai Chokaa Housing Scheme.

b) A permanent injunction to restrain the defendants or their agents from interfering, trespassing, alienating or in any way dealing with Plot No G 3 situate in Ruai Chokaa Housing Scheme.(sic)

c) An order against the 4th defendant for mesne profits to be quantified during the hearing for illegal detainer of property from 2010 until payment in full.

d) An order for compensation of the plaintiff of the amounts to be quantified during the hearing of the suit spent in the follow up of this matter from 2010.

e) Any other relief this honourable court shall deem fit to grant.

2. Service of summonses was effected upon the defendants through a notice in the Daily Nation edition of 19/7/2018. The defendants did not enter appearance. Consequently, the case proceeded to hearing as an undefended cause.

3. The case of the plaintiff is contained in the amended plaint, evidence taken on 13/3/2019 and written submissions dated 2/12/2109. In summary, the plaintiff contends that on 3/10/2009, he purchased an unsurveyed piece of land designated as Plot No G3-05 (**the suit property**) from Mrs Agnes Kagure Karumba who was the first allottee of the said plot at a consideration of Kshs 140,000. The suit property was a plot within Ruai Chokaa Housing Scheme. Officials of the Housing Scheme subsequently effected an internal transfer of the suit property into the name of the plaintiff. At all material times, officials of the Housing Scheme confirmed to the plaintiff that Mrs Karumba was the lawful owner of the suit property. The Housing Scheme issued him with an internal certificate of ownership after he had paid the requisite charges. He was put in possession. In 2010, the 4th defendant trespassed onto the suit property and erected structures thereon. His efforts to recover the suit property through the Housing Scheme's Office, the Police, and the Local Administration, had come to naught. Consequently, he brought this suit seeking the above orders.

4. I have considered the pleadings, evidence and submissions before court. The suit property is unsurveyed. It is not clear if it is part of a larger registered parcel of land. The plaintiff did not tender evidence relating to the larger parcel of land within which the suit property falls. All he stated is that the suit property was sold to him by Mrs Karumba who had been allocated the suit property by Ruai Chokaa Housing

Scheme. The only ownership document which the plaintiff produced is Certificate No 1654 purportedly issued by Ruai Chokaa Housing Scheme. Secondly, the plaintiff did not tender any evidence to support his claim for *mesne profits* and for an order for compensation in terms of prayer (d).

5. Consequently, I will not grant the plaintiff the declaratory order sought in prayer (a), the *mesne profits* sought in prayer (c), and the plea for compensation in terms of prayer (d). I will only grant the plaintiff prayer (b) of the amended plaint, together with costs of the suit.

6. Consequently, judgment is hereby entered in favour of the plaintiff against the defendants in the following terms:

a) A permanent injunction is hereby issued restraining the defendants and their agents/servants against interfering with, trespassing on, alienating or dealing with Plot No G3.05 situated in Ruai Chokaa Housing Scheme, Nairobi.

b) The defendants shall bear costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 15TH DAY OF JANUARY 2020.

B M EBOSO

JUDGE

In the presence of:-

Mrs Kayugira for the plaintiff

June Nafula - Court Clerk