



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC NO.588 OF 2012

NGINA MUNYAO.....PLAINTIFF

=VERSUS=

JOYCE NYAGA & ANOTHER.....DEFENDANTS

JUDGEMENT

1. By an amended Plaint filed on 14th March 2010 the Plaintiff filed this suit against the Defendants seeking the following reliefs:-

1) A declaration that the Plaintiff is entitled to exclusive and unimpeded right of possession and occupation of all that piece of land known as Plot Number T 101 and T 102 situated at off Komarock road, LR 10904/2 (the suit property) and that the 1st Defendant whether by herself or her servants or agents or otherwise howsoever is wrongly in occupation of the suit property and are accordingly , trespassers on the same.

2) A Permanent injunction restraining the 1st Defendant whether by herself or her servants or agents to otherwise howsoever from accessing, constructing , dealing or in any other way entering or remaining, continuing in occupation of the suit property.

3) A mandatory injunction/eviction order compelling the 1st Defendant, her servants assigns and/or agents to vacate the suit property plot No.T102 and the same to be enforced by area Chief and Assistant Chief Location in case of default.

4) General damages for Trespass.

5) Costs of the suit together with interests thereon.

2. The 2nd Defendant is a land buying company which acquired huge tracts of land off Kangundo Road in Ruai area. One of the parcels was LR 10904/2 measuring about 2024 hectares. This land was subdivided and was allocated to its shareholders who included the Plaintiff. The Plaintiff was allocated plot No.TO1 and TO2 pursuant to her two shares which she had been allocated on 1/6/1978. The Plaintiff was given share certificate No.842. The Plaintiff took possession of the two plots but she could not build on them for lack of funds. She however kept on checking on the two plots on a regular basis.

3. In one of her visits to the two plots, she found some construction which was going on in one of the two pots namely Plot No. TO2 (suit property).From inquires conducted, she discovered that the construction was being undertaken by the 1st Defendant. She sought intervention of the area Assistant Chief who promised to look into the issue but nothing happened. The Plaintiff also reported the invasion to the police who do did not act. The Plaintiff offered to sell the suit property to the 1st Defendant but the 1st Defendant refused to meet her.

4. The 1st Defendant testified that her late husband is the one who was allocated a plot at Embakasi Ranching Company Limited and was later given a bonus plot. According to the 1st Defendant, the bonus plot which is the suit plot is P 5887. She took possession and with the help of her children started construction. When the Plaintiff came up to claim the suit property, the two went before Embakasi Ranching Company Limited where officials confirmed that the suit property belonged to her and that the Plaintiff's plot was elsewhere. The Plaintiff was asked to go and be shown her plot but she refused.

5. I have carefully considered the evidence adduced by the Plaintiff and that of the 1st Defendant. I have also considered the submissions filed by the Plaintiff. The Defendants had been given 14 days within which they were to file their submissions with effect from 26th February 2020. As at the time of writing this Judgment, the Defendants had not filed any submissions and if any were filed, then they are not in the file. From the evidence , the issues which emerge for determination are firstly who was allocated the suit property; secondly is plot No.P5887 the same as the suit property; thirdly, has the 1st Defendant trespassed on to the suit property, fourthly is the Plaintiff entitled to the prayers in

the Plaintiff and lastly, which order should be made on costs.

6. As I have said hereinabove, the plot which is the subject of this suit is plot T02. The Plaintiff produced a share certificate in her name which was issued on 1st June 1978. She had two shares for which she was given share certificate number 842. The Plaintiff was subsequently allocated two plots that is TO1 and TO2 on 28th April 1988. The Plaintiff accepted the allocation on 2nd June 1988. On 11th January 1983, the Plaintiff paid Kshs.1000/= being survey fees. She had paid Kshs.7000/= for civil engineering fees. On 28th March 2011, she paid Kshs. 5,000 for the site visit to the 2nd Defendant. She was taken to the ground and her two plots were shown to her. I therefore find that it is the Plaintiff who was allocated the suit property.

7. The 1st Defendant claimed that the plot which her late husband was allocated is the one now being claimed as the suit property. The Plaintiff produced certificate number 8905 given to her husband in respect of one share. This certificate was issued on 15th April 1985. This certificate was in respect of plot P 84B. The 1st Defendant's husband was given letter of allocation dated 28th November 1982 for plot P 84. The 1st Defendant's husband accepted the allocation on 10th May 1985.

8. The 1st defendant produced a non-member certificate in respect of plot No.P 5887 which was issued on 24th July 2000. At the back of the documents produced by the 1st Defendant, it is indicated that the 1st Defendant's husband was allocated plot p 84-B . The remarks there show that the bonus plot was to be allocated a new number. The original plot allocated to the 1st Defendant's husband was at Gituamba. It is therefore clear that the original plot which was allocated to the 1st Defendant's husband was P 84 which was at Gituamba. The bonus plot p 84-B was to be allocated later. There is no evidence that it was ever allocated and if the 1st Defendant argues that that is the plot which became plot p 5887, then this does not add up because the certificate which was verified on 24th July 2000 and 25th July 2000 by the Secretary and Chairman of 2nd Defendant respectively was a non-member certificate and could not have been issued to a person who was already a shareholder.

9. When this dispute arose between the Plaintiff and the 1st Defendant, the disputing parties were called to the offices of the 2nd Defendant, it was found that the suit property which the 1st Defendant was claiming under P 5887 actually belonged to the Plaintiff. The Plaintiff was asked to leave the suit property to the 1st Defendant and that she be allocated an alternative plot. This letter was written by the 2nd Defendant on 9th October 2015. It is therefore clear that plot No.P 5887 is not the same as the suit property. The Plaintiff was being asked to surrender the suit property to 1st Defendant because the 1st Defendant had interred the remains of her husband on it.

10. There is no doubt that the 1st Defendant is a trespasser on the suit property. This is clear from the analysis hereinabove. The 1st Defendant being a trespasser on the suit property, it follows that she cannot be left to stay there. The 1st Defendant had been offered the opportunity to purchase the suit property but she refused to meet the Plaintiff. The Plaintiff has already sold plot TO1 and there was no reason why the 1st Defendant could not take the offer more so given that she has already buried her husband there. I therefore find that the Plaintiff is a trespasser on the suit property. The Plaintiff has been prevented from her property since 2011. This is a period of about nine years now. The Plaintiff is asking for general damages of Kshs.800,000/= . In the circumstances of this case, there is nothing to indicate that the Plaintiff would have moved to develop the suit property soon. She has already sold the adjacent plot she had. I will therefore give her nominal general damages of Kshs.100,000/- (One hundred Thousand).

11. In summary thereof, I find that the Plaintiff has proved her case against the Defendants on a balance of probabilities. I enter Judgment in favour of the Plaintiff against the 1st Defendant in terms of prayers 1, 2 , 3 and 4 of the amended Plaintiff filed on 14th March 2010 in addition to general damages of Kshs.100,000/= which shall attract interest at court rates from the date of this Judgment.

Dated, signed and delivered at Nairobi on this 7th day of May 2020

E.O.OBAGA

JUDGE

In the absence of parties who had been notified of the date of delivery of Ruling.

Court Assistant: Hilda

E.O. OBAGA

JUDGE