



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC SUIT NO. 681 OF 2016**

**LUCY WAMBUI MUTHEE *alias***

**RUSIA WAMBUI B MUTHEE.....PLAINTIFF**

**VERSUS**

**EMBAKASI RANCHING COMPANY LTD....1 ST DEFENDANT**

**TERESIA WAMBUI THINDIU.....2 ND DEFENDANT**

**JOHN KAMAU.....3 RD DEFENDANT**

**JUDGMENT**

1. By a plaint dated 18/6/2016, the plaintiff herein, Lucy Wambui Muthee *alias* Rusia Wambui B Muthee, sought the following verbatim orders against the defendants:

***a) An injunction restraining the defendants, their servants, workmen and agents from entering on, wasting, constructing on, alienating, transferring, otherwise interfering or dealing with the plaintiff's property being Plot Numbers Q167 and Q168 out of Land Reference Number 10904/2 situate in Ruai off Komorock and in anyway interfering with the plaintiff's use and enjoyment of the said property.***

***b) A mandatory injunction to issue against the 2nd and 3rd respondents, their servants and/or agents or otherwise howsoever to vacate and handover vacant possession of the said plots by demolishing the structures they have erected on the suit premises and vacate the suit premises immediately.***

***c) An order directed to the 1st defendant to issue the plaintiff with a title deed.***

***d) General damages for trespass and loss of use of the property.***

***e) Interest thereon.***

***f) Costs of this suit.***

***g) Any other relief the court deems fit to grant.***

2. Her case was that she was a *shareholder of Embakasi Ranching Company Ltd (the 1st defendant)*, holding two shares comprised in Share Certificate Number 5556. The 1st defendant allocated her two plots by virtue of her shareholding namely, Plot No Q167 and Plot No Q168 (**the suit properties**). She was further allocated two bonus Plots, namely, Plot No Q167B and Plot No 168B. In 2011, the 1st defendant permitted the 2nd and 3rd defendants to trespass and remain on the suit properties. They damaged her perimeter fence and erected structures on the suit properties. Despite complaints made to the 1st defendant, they had not taken any action to stop the illegal activities of the 2nd and 3rd defendants. The plaintiff was apprehensive that the 2nd and 3rd defendants were acting in cahoots with the 1st defendant and would, with time, illegally transfer the properties from the plaintiff to the 2nd and 3rd defendants since the plots were in a prime area. Despite demand and notice of intention to sue, the defendants had continued to interfere with the suit properties.

3. Although the defendants were served through a notice in the Daily Nation Newspaper edition of 12/4/2019, they neither entered appearance nor filed defence.

4. The plaintiff testified as PW1. She adopted her witness statement dated 18/6/2016 as her sworn evidence-in-chief. Her evidence was that she was a shareholder in Embakasi Ranching Company Limited which owned Land Reference Number 10904/2, situated off Komorock Road Nairobi, measuring 2,024 hectares. She bought two shares from the 1st defendant and was issued with Share Certificate Number 5556 on 1/8/1978. Subsequently, she was issued with a provisional letter of allocation in respect of Plot Numbers Q167 and Q168 which were carved out of Land Reference Number 10904/2. She met all the conditions for issuance of titles. The conditions included payment of the requisite monies for survey- issuance of title deed, installation of beacons, civil engineering, installation of water, access roads, sewer drainage, way leaves and sub divisions. She paid membership and registration fees and was allocated two bonus plots; namely, Plot No Q167B and Plot No Q168B. She had not been issued with title deeds to the suit properties. She lost her original share certificate on 9/3/2011 and she was issued with a police abstract. In 2011, she discovered that the 2nd and 3rd defendants had encroached on the suit properties. The 2nd defendant had trespassed on Plot No Q167 while the 3rd defendant had trespassed on Plot Number Q168. She reported the matter to the 1st defendant who summoned the 2nd and 3rd defendants to visit their offices and carry along their title documents but they did not turn up. She also reported the trespass to Ruai Police Station. The police interrogated the 2nd and 3rd defendants on their claims to the suit properties. They alleged that a surveyor by the name Jack Kamau Wachira, who was working with the 1st defendant, sold to them the suit properties. The defendants had frustrated efforts to sort the issue out of court. The 2nd and 3rd defendants had continued with the trespass by delivering construction materials and putting up walls and other structures on the suit properties. She paid Kshs 20,000 for a site visit. During the site visit, which she was accompanied by a surveyor of the 1st defendant by the name Biuka during the site visit. The surveyor indicated to her that he had forwarded the issue to the directors of the 1st defendant but the issue had not been resolved.

5. She added that on 6/4/2026, through a notice dated 4/4/2016, the 1st defendant through its chairman, Mr Samuel Mwangi Thuita, published a notice in the Daily Nation Newspaper advising all the shareholders to take their share certificates for verification. The notice also stated that those who did not have genuine papers would not get title deeds. Following the notice, she visited the 1st defendant's office where verification was done by stamping, signing and dating the copy of her share certificate. She added that she had not been able to get vacant possession of the suit properties despite complaining to the 1st defendant. She asked the court to grant her the prayers sought in the plaint.

6. George Irungu Muthee testified as PW2. He stated that he was the son of the plaintiff. He adopted his witness statement dated 18/6/2016 as his sworn evidence-in-chief. His evidence was that by virtue of being a shareholder in the 1st defendant company, the plaintiff was allocated the suit properties by the 1st defendant. He was informed by a neighbor that some activity was taking place on Plot Number Q167. He informed the 1st defendant and they made a site visit to the suit properties. He found a lady at the site. The lady was asked to go to the office of the 1st defendant with her papers but she did not honour the request. He reported the matter to Ruai Police Station and the report was booked under OB Number 41/27/10/2011. Plot Number Q168 was under cultivation and a gate had been erected on it. He visited the suit properties with the plaintiff in 2015 and they met the 3rd defendant who claimed that he purchased one of the the suit properties from the 1st defendant through a surveyor by the name Jack Wachira Kamau. The 3rd defendant alleged that there was double allocation. They agreed to meet at the 1st defendant's office. The 3rd defendant did not show up. They returned to Ruai CID Offices where the 2nd defendant made a statement on how she allegedly bought the land. Efforts to reach the 3rd defendant were fruitless.

7. PW2 added that in February 2016, they visited the offices of the 1st defendant to inquire about the titles. They were asked to pay Kshs 20,000 for site visit. The matter was referred to the surveyor who allegedly sold the suit properties to the 2nd and 3rd defendants. He promised to settle the matter in one week. The 2nd defendant proceeded to fence Plot Q167. They went back to the offices of the 1st defendant and were assured that the suit properties belonged to the plaintiff who had legitimate documents. He added that the 2nd and 3rd defendants, in collusion with the 1st defendant, were in the process of pouring building materials on the plots which was an indication that they intended to develop permanent structures on the suit properties. He produced a bundle of photographs.

8. The plaintiff filed written submissions dated 29/5/2020 through the firm of Wangoko & Company Advocates. The plaintiff framed 6 issues to be determined by the court: (i) whether the plaintiff was entitled to the suit properties; (ii) whether the plaintiff was entitled to specific performance of contract through the registration of the suit properties and issuance of title deeds in her name; (iii) whether the 2nd and 3rd defendants had trespassed upon the suit properties; (iv) whether the plaintiff should be granted injunctive orders against the 2nd and 3rd defendants to evict them and permanently restrain them from trespassing on the suit properties; and, (v) who should pay costs of this suit.

9. On the first issue, counsel submitted that the plaintiff had fulfilled the conditions set out in the allocation letter, and that the plaintiff had led evidence to demonstrate that the 1st defendant had on several occasions acknowledged that it had allocated the plaintiff the suit properties. On the second issue, counsel submitted that the 1st defendant owed the plaintiff a duty to process the titles because the plaintiff had paid a fee of Kshs 3500 for processing of the titles. On the third issue, counsel submitted that the plaintiff had led evidence in form of photographs to demonstrate that the 2nd and 3rd defendants had trespassed on the suit properties. He further submitted that since the evidence was not challenged, the 2nd and 3rd defendants were trespassers and the plaintiff was entitled to judgment and a permanent injunction against the defendants. Reliance was placed on the decision in **Ochako Obinchu v Zachary Oyoti Nyamongo [2018] eKLR**. On the fourth issue, counsel submitted that since the plaintiff's evidence was not challenged by the defendants, the plaintiff was entitled to the prayers sought. Relying on the decision in **Ochako Obinchu v Zachary Oyoti Nyamongo [2018] eKLR**, counsel submitted that where trespass has been proved, damages should be awarded to the land owner. It was further submitted that the court should award the plaintiff damages even though a specific sum had not been pleaded. Relying on the decision in **Philip Aluchio v Crispinus Ngyo [2014] eKLR**, where the plaintiff was awarded Kshs 100,000 for trespass, counsel submitted that the plaintiff in this suit should be awarded nominal damages. On the issue of costs, it was submitted that costs follow the event and in this case, the plaintiff was entitled to costs.

#### **Determination**

10. I have considered the pleadings, evidence and submissions placed before court. Pursuant to the order made by this court on 21/2/2019, the defendants were served with summons through a notice in the Daily Nation Newspaper edition of 12/4/2019. The defendants neither entered appearance nor filed defence. Consequently, *ex-parte* hearing was conducted on 4/3/2020.

11. The plaintiff led evidence which remains uncontroverted. The case of the plaintiff is that, pursuant to her shareholding in the 1st defendant, she was allocated the suit properties and she is the legitimate owner of the suit properties. She produced documentary evidence to that effect. Her evidence is uncontroverted. In the circumstances, the court is satisfied that the plaintiff has proved her case on a balance of

probabilities. What remains is for the court to determine the appropriate reliefs available to the plaintiff, based on the prayers sought in the plaint.

12. Prayers (a) and (b) relate to injunctive orders. Prayer (c) is an order directing the 1st defendant to process titles in the name of the plaintiff. Having found that the plaintiff has proved her case on a balance of probabilities, there is no reason why the three prayers should not be granted.

13. Prayer (d) is a plea for general damages. The plaintiff did not lead any evidence to assist the court in the assessment of general damages. In the circumstances, I will award the plaintiff nominal damages in the sum of Kshs 500,000. I will also award the plaintiff costs of the suit which shall include costs of the newspaper notice. The award in respect of damages and costs shall attract interest from the date of judgment.

#### **Disposal Orders**

14. In light of the above findings, I make the following disposal orders in this suit against the defendants:

*a) An injunction is hereby issued restraining the defendants together with their agents and servants against entering, wasting, constructing on, alienating, transferring, or otherwise interfering with the plaintiff's properties, designated as Plot Numbers Q167 and Q168 being plots within Land Reference Number 10904/2 situated in Ruai, Komarock, Nairobi, or in any way interfering with the plaintiff's use and enjoyment of the said properties.*

*b) A mandatory injunction is hereby issued against the 2nd and 3rd defendants requiring them to vacate and hand over the suit properties to the plaintiff and demolish the structures they have erected on the suit properties.*

*c) The 1st defendant is hereby directed to process the titles to the said plots in the name of the plaintiff.*

*d) The plaintiff is awarded nominal damages in the sum of Kshs 500,000 against the defendants jointly and severally.*

*e) The plaintiff is awarded costs of this suit.*

*f) The damages and costs awarded herein shall attract interest at court rate from the date of judgment*

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 29TH DAY OF JULY 2020.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Ms Mutile for the Plaintiff.

Ms June Nafula - Court clerk