



REPUBLIC OF KENYA



Mwangi & 16 others v Nyemukia Developers Company Limited (Environmental and Land Originating Summons 209 of 2016) [2020] KEELC 3987 (KLR) (16 September 2020) (Judgment)

Jamlick Mwangi & 16 others v Nyemukia Developers Company Ltd [2020] eKLR

Neutral citation: [2020] KEELC 3987 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIROMENTAL AND LAND ORIGINATING SUMMONS 209 OF 2016

AK BOR, J

SEPTEMBER 16, 2020

BETWEEN

JAMLICK MWANGI 1ST PLAINTIFF
ERICK KANGETHE 2ND PLAINTIFF
MARY WAMAITHA 3RD PLAINTIFF
GEOFFREY MUCHENE (SUING AS CHAIRMAN KAMUINGI SELF HELP GROUP) 4TH PLAINTIFF
MWANGI MBUTHIA 5TH PLAINTIFF
MARY NDIRIMA 6TH PLAINTIFF
LYDIA NYAMBUA KIMEMIA 7TH PLAINTIFF
ELIZABETH ATEKA 8TH PLAINTIFF
DAVID KINYANJUI MUNGAI 9TH PLAINTIFF
PETER NJUGUNA KAMAU 10TH PLAINTIFF
MARY WAMBUI KINYANJUI 11TH PLAINTIFF
CAROLINE MUGURE KIRAGU 12TH PLAINTIFF
RUTH WAIRIMU NJOROGE 13TH PLAINTIFF
PETER MARURI NGOCHE 14TH PLAINTIFF
FRANCIS KAMAU NJUGUNA 15TH PLAINTIFF
HEZEKIEL MBIRA KIMENDE 16TH PLAINTIFF
SIMON PETER MWANGI 17TH PLAINTIFF



AND

NYEMUKIA DEVELOPERS COMPANY LIMITED DEFENDANT

JUDGMENT

1. The Plaintiffs filed suit on 4/3/2016 claiming they were members of the Defendant from whom they acquired portions of land, which they contended that the Defendant was selling to unsuspecting members of the public to the detriment of the Plaintiffs. They claimed that they had paid all the requisite fees to the Defendant and sought an order to compel the Defendant to release the Plaintiffs' letters of allotment for the parcels of land, deed plans and duly executed transfer forms. They sought vacant possession of the land and a permanent injunction to stop the Defendant or its agent from developing or interfering with the suit parcels in the manner that it would prejudice the interests of the Plaintiffs.
2. The Defendant did not file a defence and the hearing of this case proceeded on 2/7/2020 when the 2nd Plaintiff testified and produced various documents. These included the list said to be that of members of the Defendant's company; some occupational certificates issued by the Defendant to some of the Plaintiffs; copies of receipts showing the payments made for the plots and various correspondence.
3. Looking at the documents produced by the Plaintiffs, the list of shareholders did not give any land reference number and only referred to plot numbers and identified the type of plots as either residential, commercial, church, nursery, social hall or church with some reflected as gift plot and s/share plot. The occupational certificates and receipts issued by the Defendant to the Plaintiffs only referred to plot numbers without giving the land reference number.
4. The 2nd Plaintiff referred to L.R. No. 7340/157 and 7340/173 Mavoko in his witness statement and only produced a copy of the first page of the certificate of title over L.R. No. 7340/173 measuring 2.538 hectares issued to the Defendant on 9/5/1995. No evidence was led to show whether L.R. No. 7340/173 was ever subdivided by the Defendant. The plaint was filed on 4/3/2016.
5. A recent search done on the suit land would have confirmed whether any transactions were carried out against the land after the certificate of title was issued in 1995, for that is a very long time during which the status of the suit land may have changed. The Mavoko Municipality Council issued a rates clearance certificate to the Defendant on 13/10/2010 in respect of plots 7340/157 and 7340/173. It is not clear whether the Defendant subdivided these two parcels of land and transferred the resultant parcels to third parties who should have been made parties to this suit.
6. The court declines to grant the orders sought in the plaint because no land reference number was given in respect of which the court could have granted the orders sought. Since the matter was not defended the Plaintiffs will bear their own costs.

DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF SEPTEMBER 2020

K.BOR

JUDGE

In the presence of:-

Mr. Stanley Kinyanjui for the Plaintiffs

Mr. V. Owuor- Court Assistant



No appearance for the Defendant

