



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC NO. 559 OF 2017**

**MARY WANJIKU KIMANI.....PLAINTIFF**

**VERSUS**

**MARY WANJIRU.....1<sup>ST</sup> DEFENDANT**

**MARTIN PAUL.....2<sup>ND</sup> DEFENDANT**

**NAIROBI CITY COUNTY GOVERNMENT.....3<sup>RD</sup> DEFENANT**

**JUDGEMENT**

1. By a plaint dated 24<sup>th</sup> August 2017 and amended on 12<sup>th</sup> September 2017, the plaintiff seeks judgment against the defendants jointly and severally for:-

*(a) A declaration that the plaintiff is the sole legal owner of the leasehold interest in house number 84 -3D situated at Umoja II estate Nairobi from Nairobi City County Government.*

*(b) An eviction against the 1<sup>st</sup> and 2<sup>nd</sup> defendants jointly and severally.*

*(c) Costs of the suit.*

*(d) Any other or further orders that the court deems just in the circumstances.*

2. Upon being served with copies of plaint and summons to enter appearance the 1<sup>st</sup> and 2<sup>nd</sup> defendant neglected to enter appearance and/or file defence within the stipulated period. There is an affidavit of service duly filed on 31<sup>st</sup> October 2017.

3. The 3<sup>rd</sup> defendant entered appearance through the firm of M/S Osero & Co. Advocates on 20<sup>th</sup> November 2017. The 3<sup>rd</sup> defendant also filed a statement of defence dated 14<sup>th</sup> February 2018 and filed in court on 15<sup>th</sup> February 2018. In paragraph 4 of the statement of defence, "the 3<sup>rd</sup> defendant categorically denies having knowledge about the ongoings between the plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> defendants, and it is a total stranger to the allegations contained in the amended plaint. The plaintiff is put to strict proof thereof". It prays that the plaintiff's suit be dismissed with costs.

4. The plaintiff set down the matter for hearing on 27<sup>th</sup> February 2020. The 3<sup>rd</sup> defendant was duly served. There is an affidavit of service sworn by Peter M. Keli court process server on the 20<sup>th</sup> February 2020 and filed in court on 21<sup>st</sup> February 2020. The court was satisfied that the 3<sup>rd</sup> defendant had been duly served and directed that the matter proceeds exparte.

5. PW1, Mary Wanjiku Kimani, the plaintiff, told the court that she is the owner of House No. 84-3D Umoja II estate. She adopted her witness statement dated 24<sup>th</sup> August 2017 and the bundle of documents dated the same date. She told the court that she was allocated the suit premises by the 3<sup>rd</sup> defendant having applied for allocation under application number 024831 in the year 1987. It was followed by balloting which earned her ballot No. 761 and a house account number 23979 was opened on her name by the then Nairobi City Council (predecessors to the 3<sup>rd</sup> defendant).

6. She paid the Kshs.58,490 being the purchase price of the house. She made payments by instalments. She was issued receipt no. 4693477 dated 3<sup>rd</sup> March 1999. She further told the court, she has been paying the rates in respect of the suit premises.

7. That in or about May 2016 the 1<sup>st</sup> defendant forcefully and illegally took possession of the units comprised in the suit premises and placed an illegal occupant being the 2<sup>nd</sup> defendant who pays rent to the 1<sup>st</sup> defendant.

8. In support of her case, the relied on the documents in the list of documents dated 24<sup>th</sup> August 2017. She produced the original letter of allocation as exhibit P1; the original house card exhibit P2; letter dated 26<sup>th</sup> March 1999 exhibit P3; receipt for Kshs.55,190 exhibit P4; receipt no. 386310 dated 5<sup>th</sup> January 1988 – marked exhibit P5; she also produced a letter dated 19<sup>th</sup> December 2016 by the Director of Investigations of the 3<sup>rd</sup> defendant confirming the house belongs to her as exhibit P6. She also produced two other letters as exhibit P7 and 8 respectively.

9. The plaintiff's case has not been controverted. I find that she has demonstrated she acquired the suit premises. On the other hand, the 1<sup>st</sup> and 2<sup>nd</sup> defendants had the opportunity to show how they acquired the suit premises but they neglected and/or refused to participate in these proceedings.

10. All in all, I find that the plaintiff has proved her case against the defendants on a balance of probabilities. I enter judgment in her favour as follows:-

*(a) That a declaration is hereby issued that the plaintiff is the sole legal owner of the leasehold interest in House Number 84-3D situated at Umoja II Estate Nairobi from Nairobi City County Government.*

*(b) That an order of eviction is hereby issued against the 1<sup>st</sup> and 2<sup>nd</sup> defendants jointly and severally.*

*(c) That the plaintiff shall have costs of the suit and interest.*

It is so ordered.

**Dated, signed and delivered in Nairobi on this 19<sup>th</sup> day of November 2020.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for for the Plaintiff

No appearance for the Defendants

Phyllis - Court Assistant