



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI LAW COURTS**

**ELC NO.946 OF 2015**

**TITUS MITHAMO MACHARIA.....PLAINTIFF**

**VERSUS**

**MSHAMBA HOUSING CO-OPERATIVE SOCIETY.....DEFENDANT**

**JUDGEMENT**

1. The Plaintiff is a member of the defendant company which is a land buying Co-operative Society. The defendant purchased LR No. 9363/102 at Ruai in Nairobi County. The land was subdivided into portions of approximately 40' by 80' which were then allocated to the defendant's members. One of the beneficiaries of the plots was the plaintiff who was allocated plot No.060 measuring 40' by 80'. When the defendant applied for approval of the subdivision scheme, the then Nairobi City Council gave conditions for the approval. These conditions resulted in some plots being taken by the expanded riparian reserve and roads. It was agreed that those who were affected by the new development be given alternative plots at Donyo Sabuk in Machakos County.

2. The Plaintiff was one of those who were affected. The plaintiff was given plot No. 090 at Donyo Sabuk. It is as a result of this action that the plaintiff filed this suit against the defendant in which he seeks an order compelling the defendant to issue him with land equivalent to the one which he had been given at Ruai or be paid the equivalent in monetary value of a similar plot in the same area.

3. During the hearing of this suit, the plaintiff testified that he had known for six years that he had secured a plot at Ruai. In 2013 he was informed that he was being re-located to Donyo Sabuk on grounds that the plot he had at Ruai fell on riparian reserve. He contends that the decision to relocate him to Donyo Sabuk was made in bad faith and that the Donyo Sabuk plots are less in value as compared to the plots at Ruai. The plaintiff is therefore seeking for a similar plot at Ruai or monetary compensation which is equivalent to the value of a 40 x 80 plot at Ruai.

4. The defendant through its secretary denied the plaintiff's claim contending that the plaintiff was present in the meeting which decided to give alternative plots to those members who missed out plots at Ruai due to the stringent conditions by the Nairobi City Council. The defendant stated that the plaintiff was a member of the supervisory committee of the defendant and was aware of the decision to give plots at Donyo Sabuk and that the plaintiff's suit was brought in bad faith and should therefore be dismissed with costs.

5. I have carefully considered the evidence adduced by the plaintiff as well as the evidence adduced on behalf of the defendant. I have also considered the submissions by the parties. There is no doubt that the plaintiff had been allocated land at Ruai. There is also no doubt that one of the persons who later missed out plots at Ruai were given plots at Donyo Sabuk. The plaintiff does not deny that he was given a plot at Donyo Sabuk. The issues which emerge for determination are firstly whether the decision to allocate the alternative plots at Donyo Sabuk was made in bad faith. Secondly whether the plaintiff was part for the decision to re-locate some members to Donyo Sabuk. Thirdly whether the plaintiff is entitled to the reliefs he is seeking in the plaint.

6. The first two issue can be dealt with together. Initially there was land enough for members of the defendant. According to the initial proposed subdivision scheme, all members had been accommodated and given plots. When the City Council gave stringent conditions to be complied with before approval of the subdivision, the defendant society was forced to carry out a new subdivision to comply with the conditions by the Nairobi City Council. This inevitably led to some plots being rendered non-existent. Those which were available had to be sold to clear the society's huge debts. A decision was then arrived at where the members resolved to purchase land at Donyo Sabuk to give out to those who were affected. This is how LR No. Donyo Sabuk/Komarock Block 1/43 was purchased. Allocation of plots on this land was done on 23<sup>rd</sup> March 2013. The plaintiff was allocated plot No.090.

7. There were subsequent meetings held such as the special general meetings held on 25<sup>th</sup> July 2015. The plaintiff was in attendance and there is evidence that he was in the management committee. He cannot therefore turn around and claim that the decision to re-locate those who missed out on plots at Ruai was made in bad faith. The decision to relocate those who missed out was made in good faith. The plaintiff fully took part in the decision as he was in the management team.

8. There is evidence that there were over 70 members of the defendant who were re-located. Though the plaintiff claims that there were about 14 plots which were available at Ruai, there is no evidence that these plots were available for those members who had been affected. These 14 plots according to the minutes of 25<sup>th</sup> July 2015 were created by the surveyor for re-sale under guidance of the management of which the plaintiff was one of them. The plaintiff cannot therefore use this as a basis for arguing that he was re-located to Donyo Sabuk despite there being plots available at Ruai. I therefore find that the decision to re-locate some members to Donyo Sabuk land was made in good faith and in the interest of the defendant's members and that the plaintiff was part of the decision making process as confirmed from his presence in documents produced by the defendant.

9. The Plaintiff's claim in the plaint is that the defendant had refused to process title in respect of plot No.060 at Ruai. The issue of re-location was mentioned in passing and as a way of showing that the re-location decision was made in bad faith. At the hearing of this suit, the plaintiff testified that he wanted to be paid the difference in value of the Ruai plot and the Donyo Sabuk plot. This is why he produced two valuation reports one for the Donyo Sabuk plot which was valued at Ksh.200,000/= and the other for the Ruai plot valued at Kshs.1,600,000/=. The plaintiff is not entitled to be paid the difference in value between the Donyo Sabuk plot and the Ruai plot. A party is bound by his pleadings and one cannot be allowed to depart from his pleadings. In any case, I have demonstrated hereinabove that the decision to re-locate some members was made in good faith and therefore there is no basis for seeking to be given an alternative plot in Ruai while retaining the Donyo Sabuk land or for alternative compensation in monetary terms. I therefore find that the plaintiff's suit is misconceived. The same is hereby dismissed with costs to the defendant.

Dated, Signed and delivered at **Nairobi** on this **24<sup>th</sup>** day of **January 2019**.

**E.O.OBAGA**

**JUDGE**

In the presence of:-

Mr Mokuwa for Plaintiff

Mr Njamweya for Mr Kabiru for defendant

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**