



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NO.491 OF 2011

MARGARET MUTHONI MURAGE.....1ST PLAINTIFF

SILAS KENNETH IRUNGU.....2ND PLAINTIFF

=VERSUS=

COUNCILOR PETER KANGARA.....1ST DEFENDANT

NAIROBI CITY COUNTY.....2ND DEFENDANT

JUDGEMENT

1. By an amended plaint dated 20th March 2015, the plaintiffs sought the following reliefs against the defendants:-

a) A permanent injunction be issued restraining the 1st defendant from occupying, renting, building further, using and or residing on the building which has been built illegally on plots no.307 and 405 Umoja II Zone 8.

b) The 1st defendant's building built on plots No.307 and 405 be condemned as an illegal structure and be demolished with costs to be borne by the 1st defendant.

c) The 2nd defendant be ordered to refund all payments made to it by the plaintiffs.

d) The 1st and 2nd defendants be ordered to compensate the plaintiff for the loss of their commercial houses and plots, loss of mesne profits at current market value rate of the plots and buildings which were demolished.

e) Costs of the suit.

2. In the amended plaint the first and second plaintiffs stated that on 17th July 2003 they were allotted plot Nos.307 and 405 respectively at Umoja II zone 8, Nairobi. The two plaintiffs started putting up houses on their respective plots. When the houses had reached lintel level, the defendants in the company of hired people went and demolished the buildings at dawn on 27th August 2011. The plaintiffs went and reported the incident at Buruburu Police Station before this suit was filed.

3. During the hearing, the first plaintiff never testified as the court rejected an application for adjournment. The second plaintiff testified that after allocation of plot No.405, he constructed on the same after being given a go ahead by officials of Nairobi City Council. His building which had reached lintel level was demolished by unknown persons. He stated that it is the first defendant who has now constructed at the site where his incomplete house was demolished.

4. The first defendant testified that he purchased the plot numbers 203 and 204 from their previous owners. He went ahead to construct sixteen rooms on the two plots. The second defendant had issued notices to people who had constructed on the road reserve along Manyanja Road. His caretaker informed him that on the night of 27th August 2011, officials from Nairobi City Council demolished all illegal structures on the road reserve. The first and second plaintiffs went and reported to the authorities that their incomplete structures had been demolished by unknown people.

5. The first defendant stated that he was surprised when the plaintiffs filed this suit against him and claimed that he was behind the demolition of their buildings. He stated that he had no interest in plots Nos.307 and 405. He denied carting away building materials belonging to the plaintiffs. He stated that he only asked the area chief to carry away debris which were next to his two plots. The area chief

carted away the debris after being granted permission to do so.

6. I have considered the evidence adduced by the second plaintiff as well as the evidence of the first defendant. I have also considered the submissions by the second plaintiff and the submissions by the first defendant. The issues which emerge for determination are firstly whether plot Nos 203 and 204 as well as plot Nos 307 and 405 are on the same location on the ground. Secondly whether the plaintiffs were allocated plot No.307 and 405. Thirdly whether the first defendant was behind demolition of the incomplete buildings belonging to the plaintiffs. Fourthly, are the plaintiffs entitled to compensation from the defendants? Fifthly, can an order for demolition of buildings on plot No.203 and 204 be granted. Lastly which order should be made on costs.

7. The plaintiffs and the first defendant are claiming two plots on the same ground but using different numbers. The plaintiffs claim that their plots are 307 and 405 respectively. The 1st defendant on the other hand claims the same ground which is plot 203, and 204. The plaintiffs claim to have allocated the plots by John Mbugua who was town clerk on 17th July 2003. The said John Mbugua swore an affidavit in opposition to the plaintiffs' application for interlocutory orders. He denounced the letters of allotment as forgeries. The plaintiffs never adduced any evidence to contradict what the person who purportedly signed their letters of allotment said.

8. The first defendant purchased plot No. 203 from one Geoffrey Kariuki Gitahi. The first defendant also purchased plot No.204 from Mary Waithira Kariuki. Plot No.203 and 204 had been allotted to Patience Wambui and Rebecca Wachuka on 17th July 2003 respectively. These two ladies were the original allottees of the two plots. A surveyor from the Nairobi City County went to the ground and prepared a report which indicated that plot Nos.203 and 204 and plot Nos.307 and 405 are on different locations as per the map.

9. The position of plot Nos 203 and 204 which have since been amalgamated were identified on the ground as being next to Manyanja road. The confirmation was done by Patrick K Matheka a surveyor. He confirmed the position on the ground upon being availed with a beacon certificate by the first defendant. The plaintiffs did not avail their beacon certificates but the surveyor confirmed that from the map, the location of plot Nos.307 and 405 have nothing to do with the location of plot Nos.203 and 204. I therefore find that plot No.203 and 204 are not the same position as plot Nos.307 and 405.

10. The plaintiffs are claiming to have been allocated plot Nos 307 and 405. The town clerk who is alleged to have signed the letter of allocation denounced the said allocations. The plaintiffs did not adduce any evidence to show the contrary. I therefore find that plaintiffs were never allocated plot Nos.307 and 405 which they claim to be occupied by the first defendant.

11. In the amended plaint filed by the plaintiffs, the plaintiffs alleged that the first and second defendants were behind the demolition of their structures. As I said hereinabove, it is only the second plaintiff who testified. The second plaintiff was categorical in both examinations in chief and cross examination that he did not know who demolished his building. He in fact stated while under cross – examination by the counsel for the second defendant that it was a mistake for him to have sued the second defendant. There is therefore no basis upon which the court can find any complicity of the first defendant in the demolition of the structures. There is documentary evidence that the second defendant only demolished illegal structures which were on a road reserve along Manyanja Road. I therefore find that neither the first nor the second defendant can be held liable for demolition which occurred on plot Nos. 307 and 405.

12. There is evidence which is not contradicted that the alleged letters of allotment held by the plaintiffs were not genuine. The demolitions which followed were on illegal structures on a road reserve along Manyanja road. The photographs which were annexed to the interlocutory application for injunction clearly show that demolitions were done on an area adjacent to a tarmacked road which I presume to be Manyanja Road. There is therefore no basis upon which the plaintiffs can be compensated by either the first or second defendants or any refunds made for the amounts they allege to have paid to the second defendant.

13. The plaintiffs were seeking an order for demolition of buildings put up by the first defendant. I have demonstrated hereinabove that evidence adduced show that plot Nos 307 and 405 have nothing to do with plot Nos.203 and 204. There is therefore no basis upon which the first defendant's buildings can be demolished.

14. It is now clear from the analysis hereinabove that the plaintiffs have failed to prove their case against the defendants. The same is hereby dismissed with costs to the defendants.

Dated, Signed and delivered at Nairobi on this 14th day of February 2019.

E.O.OBAGA

JUDGE

In the Presence of:-

Mr Mburu for Mr Muchemi for 1st defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE