

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELC CASE. NO. 102 OF 2020

PALE KENYA LIMITED.....
.....PLAINTIFF

VERSUS

PAULINA NGOMI MWANGANGI.....
DEFENDANT

JUDGMENT

1. The plaintiff filed the plaint dated 2nd June, 2020 seeking judgment against the defendant for:-

a. A declaration that the defendant's action of issuing a tenancy termination notice against the plaintiff's tenants in the suit property amounts to interference with the plaintiff's proprietary rights on the suit property.

b. An order of permanent injunction do issue stopping, barring, and/or restraining the defendant whether by herself, her servants, employees or agents from entering and/or trespassing in any way in the suit premises.

c. Costs of the suit.

2. The gist of the plaint is that at all material times, the plaintiff is the registered proprietor of the land known as L.R. No. 209/8313 (the suit property) situate in Dunga Close within Industrial area, and that it has been in occupation of the same having purchased it

from the administrators of the estate of the late Esther Njoki Muigai vide a sale agreement in the year 2009.

3. The plaintiff pleaded that the suit property was transferred and registered in its name on 12th August, 2015, and that since then, it has been paying rates, and land rent without fail. Further, that on 5th March, 2020, the defendant fraudulently obtained a notice of termination of tenancy from the Business Premises Rent Tribunal against one of the tenant's Timothy Peter Mullyh T/A Tiwa Land Motors.
4. The plaintiff pleaded that the defendant does not have documents of ownership of the suit property and that the said notice is illegal and obtained vide misrepresentation of facts and fraudulent scheme. Further, it was pleaded that the said actions have caused confusion and friction which amounts to interference of its enjoyment of quiet possession of the suit property. Further, that the actions of the defendant are a clear violation of **Section 24** of the **Land Registration Act** and **Article 40** of the **Constitution**.
5. The plaintiff stated that there has never been a resolution to sell the suit property and there exists no sale agreement between the parties.

6. The defendant filed her statement of defence and counterclaim dated 20th July, 2020. In her statement of defence, the defendant denied the contents of the plaint and stated that her late husband John Mwangangi, and her family have been in possession of the suit property since the year 1975 when her late husband purchased it from the late Esther Njoki Peter Muigai Kenyatta. Further, that they constructed shops, offices and a garage, which they have always leased to their tenants.
7. The defendant pleaded that the late Esther Njoki died on 16th October, 1980 before transferring the suit property to her deceased husband and that upon her demise Gibson Muturi and Lois Waithira Muigai became the administrator and administratrix of her estate.
8. The defendant pleaded that the said administrators filed Nairobi HCCC No. 1385 of 2005 seeking eviction, but the suit was dismissed. Further, that on 28th October, 2016, they were informed that the suit property had been secretly transferred to the plaintiff, and upon investigations, it was discovered that on 6th June, 2012, the plaintiff through the firm of Migos Ogamba & Co. Advocates faked transfer documents at the Nairobi Central Land Registry which was rejected for being fraudulent. That another transfer was also rejected on 15th November, 2013 but the same

was accepted on 12th August, 2015 through collusion with an officer at the registry.

9. The defendant further pleaded that the plaintiff has through criminal and fraudulent activities obtained an illegal and defective title to their land.
10. In the counterclaim, the defendant pleaded particulars of fraud as follows: -
 - a. ***The plaintiff purports to have purchased the land in 2009 and then obtained title six years later in 2015. That is illegal and contrary to all land transactions.***
 - b. ***The plaintiff's fake and illegal transfer documents were rejected on 6/6/2012 and 15/11/2013. The same fake and illegal documents were then accepted on 15/11/2013 through brazen acts of collusion and corruption.***
 - c. ***That evidently according to the plaintiff it purportedly purchased the land in 2009 and had it transferred to itself six years later in 2015. This is a trail of criminality.***
 - d. ***The fake documents used to effect the purported transfer are a clear evidence of a criminal enterprise.***

11. The defendant pleaded that she is the lawful owner of the suit property both as a purchaser and by virtue of adverse possession having been in occupation since the year 1975 to date.

12. The defendant prays for judgment against the plaintiff in respect to the counterclaim as follows:-

a. A declaration that the title deed to LR. No. 209/8313 Industrial Area Nairobi held by the plaintiff is defective and illegal ab initio and the same be nullified.

b. A declaration that the defendant is the owner of LR. No. 209/8313 Industrial Area Nairobi as a Purchaser and by virtue of adverse possession thereof and there be rectification of title to the said LR. No. 209/8313 Industrial Area Nairobi to reflect the defendant as the absolute proprietor thereof.

c. A perpetual order of injunction restraining the plaintiff, its agents, servants and/or employees from trespassing upon LR. No. harassing the defendant and her tenants and/or in any manner interfering with the defendant's quiet possession of the suit premises.

d. General, aggravated and exemplary damages against the plaintiff.

e. Costs and interest thereon and on (d) above at court rates.

- 13.** For clarity, the last time the plaintiff was present in court for mention or for directions by representation was on 24th March, 2022. As a result, and on 23rd April, 2025, the plaintiff's suit was dismissed for want of prosecution.
- 14.** This matter proceeded for hearing on 16th July, 2025 for the hearing of the defendant's counterclaim. The defendant (DW1) adopted her witness statement dated 20th July, 2020 as her evidence in chief. She also produced the documents contained in the list of documents dated 20th July, 2020 as D. Exhibits 1 to 7 respectively.
- 15.** DW1 testified that the suit property was left to her by her late husband where there was a garage and rental shops. She informed the court that when the plaintiff sued, the Director was Onesmus Ngunjiri and she obtained orders reinstating her to the suit property, where she remained for one month and thereafter, Mr. Ngunjiri brought goons who evicted her.
- 16.** The defendant filed her written submissions dated 13th October, 2025. The defendant submitted that the counter-claim has not been rebutted or controverted. That pursuant to **Sections 7 and 38** of the **Limitation of Actions Act**, she has satisfied all the essential elements to prove adverse possession in that she has

been in actual possession of the suit property, which has been open, continuous and uninterrupted. She submitted that she has proved her case on a balance of probabilities and urged the court to allow her counter-claim as prayed.

17. I have considered the counter claim, the evidence and testimony of the defendant. The issue for determination is *whether the counterclaim has merit*. The testimony of the defendant and the evidence produced has not been refuted. The evidence tendered by the defendant provides an agreement of sale dated 27th September, 1975 between Esther Njoki Peter Muigai and John Mwangangi with respect to the suit property. There are also receipts confirming the said payment issued within the year 1976, and pleadings in High Court Civil Suit No. 1385 of 2005 which was dismissed for want of prosecution on 28th April, 2010.

18. The defendant further pleaded particulars of fraud as outlined in paragraph 10 above. **Section 107 (1)** of the **Evidence Act** states as follows:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

19. In the case of **R.G. Patel Vs. Lalji Makanji (1957) EA 314 at 317**, the Court of Appeal stated as follows:-

“Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required . . .” The court went on to state *“the law places a higher burden on anyone relying on a claim of fraud to go an extra mile of adducing evidence that will suffice to link the allegation of fraud to any party. This is a principle that every party must bear in mind as they strive to make their claim based on fraud.”*

20. As stated earlier, the evidence of the defendant has not been controverted. The evidence tendered indeed point towards attempts to transfer the suit property which were rejected. More importantly, and bearing in mind the agreement of sale dated 27th September, 1975, the defendant is entitled to own the suit property in terms of the share allocated to the late Esther Njoki Peter Muigai Kenyatta. Indeed, the ownership of the suit property by the plaintiff was fraudulent as it was not available for sale since the earlier sale had not been rescinded. In that case, the title held by the plaintiff was obtained fraudulently.

21. While the defendant pleaded adverse possession, I find the same having not been strictly proven, more so the period when the time began to run in order for the court to ascertain whether indeed the title has become adverse to that of the deceased owner. The said order cannot issue in the circumstance.

22. From the above, I find merit in the counterclaim dated 20th July, 2020 and I hereby enter judgment favour of the defendant and against the Plaintiff in the following terms:-

i. A declaration is hereby issued that the title deed to LR. No. 209/8313 Industrial Area Nairobi held by the plaintiff is defective and illegal.

ii. A declaration is hereby issued that the defendant is the owner of LR. No. 209/8313 Industrial Area Nairobi as a Purchaser.

iii. An order is hereby issued directing a cancellation of the title held by the plaintiff and a rectification of title to the said LR. No. 209/8313 Industrial Area Nairobi to reflect the defendant as the absolute proprietor of ½ share.

iv. A permanent injunction is hereby issued restraining the plaintiff, its agents, servants and/or employees from trespassing upon LR. No. 209/8313 harassing the defendant and her tenants and/or in any manner interfering with the defendant's quiet possession of the suit property.

v. Costs of the suit.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 15TH DAY OF DECEMBER, 2025.**

**HON. MBOGO C.G.
JUDGE
15/12/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Mutemi for the Defendant/Plaintiff in the counter claim

No appearance for the Plaintiff in the main suit and the Defendant in the counter claim

ORIGINAL