

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELCLC NO. E142 OF 2023

**TAWHIDA
ANDIA.....PLAINTIFF**

PHOEBE

VERSUS

**DANIEL ONYANGO (TRADING AS HURLINGUM
HOUSING DEVELOPMENT SCHEME.....1ST
DEFENDANT**

**COLLINS ODHIAMBO.....2ND
DEFENDANT**

JUDGMENT

1. The plaintiff filed the amended plaint dated 10th July, 2024 seeking judgment against the defendants for:-

a. A declaration that the plaintiff is the lawful and bonafide owner of Plot No. 221 situate on LR 11531/14 located within hurlingam housing estate in chokaa nairobi county.

b. A permanent injunction restraining the defendant whether by himself and or through agents,servants or employees from trespassing, encroaching upon or from commencing and/or continuing with construction on plot no. 0487 Hurlingam Development Scheme Chokaa or in the alternative payment of money equivalent to the current market value of the land.

c. An eviction order against any persons purporting to be in ownership and occupation of the suit property.

d. Costs and interest of this suit.

e. Any other or further relief which this honourable court deems fit and just to grant.

2. In the amended plaint, the plaintiff pleaded that she is the lawful owner of plot no. 221 situate on LR 11531/14, the suit property, located within the Hurlingam Hosuing Development Scheme having purchased the same from the predecessor in interest and representative of the 1st defendant. She pleaded that in the sale agreement, the 1st defendant was represented by Peter Ochieng Owino now deceased who was an official of the organization and also by her own mother who is also deceased.
3. The plaintiff pleaded that during the time of the purchase, her late mother was a member of the 1st defendant, and that she made the requisite payments for the development of the same. Further, that she erected a wall on the suit property and thereafter engaged a person to visit the same to ensure it is secure.
4. That sometime in the year 2024, she was informed that a wall fence had been put up blocking the gate to the suit property, and this act happened under the watch of the defendants. Further, that since reporting the matter to ruai police station, there has been no change and that despite being summoned, the 2nd defendant has

not stopped the invasion of the suit property. Further, that the actions of the defendants to sell the suit property which they enjoyed possession and failing to grant her the same amounts to fraud and illegality.

5. The plaintiff pleaded the particulars of fraud as follows:-

a. Failing/neglecting to ensure vacant possession of plot no. 221 situate on LR 11531/14 in Hurlingam Housing Development Scheme to the plaintiff hereof whereas she had purchased the said property.

b. Accepting fees and payments for development of the said piece of land only to refuse the plaintiff to proceed with the said developments afterwards.

c. Failing to issue the plaintiff with a certificate of lease on the land parcel.

6. The defendants filed the statement of defence dated 14th December, 2023. They pleaded that the property described as plot no. 221 on the suit property is unknown to them. The 2nd defendant pleaded that the 1st defendant allocated to him plot no. 229 on LR. No. 11531/10 on 22nd August, 2009 based on his membership and he was issued with a certificate of ownership. The 2nd defendant stated that the two properties are distinct or different

and it cannot be said to be the same property alleged by the plaintiff.

7. The 2nd defendant further stated that he has been in occupation and use of his plot since acquisition and he has never sold or parted with its possession. The 1st defendant pleaded that they sold plot no. 229 on LR. No. 11531/10 to the 2nd defendant and issued him with a beacon certificate.
8. This matter proceeded for hearing on 29th January, 2025. Kakai Kissinger (PW1) adopted his witness statement dated 11th March, 2024 as his evidence in chief. On cross examination, he testified that the plot referred to is no. 222 which contradicts his statement which refers to plot no. 221. He testified that the original number is LR no. 11531/14, and that what is stated in the statement is a typo. He reiterated that his statement is correct apart from the clerical error. Having represented the plaintiff, it was his testimony that the land reference in this case is no. 11531/14 which he said he is certain.
9. The plaintiff, (PW2) adopted her witness statement dated 1st November, 2023 as her evidence in chief. She produced the documents contained in the list of documents dated 2nd April, 2024 as P. exhibit nos. 1 to 45 respectively. She informed the court that

she purchased the suit property from the 1st defendant way back in March 2010, and the same was in conjunction with that of her mother. Further, that they paid the 1st defendant and executed a sale agreement. Thereafter, they were issued with an allotment letter. She testified that the property she purchased is no. 221 which she visited, and that the defendants supplied the paperwork to them.

- 10.** On cross-examination, PW2 testified that she is concerned with plot no. 221 on LR 11531/14 as that is the number she was supplied with by the 1st defendant. It was her testimony that the plot was sold to her by Peter Ochieng who signed as the vendor on behalf of hurlingham chokaa as per the agreement. She stated that Peter Ochieng was to instruct the office of the 1st defendant to change ownership, and maintained that the land reference is 11531/14. While she informed the court that Peter Ochieng is deceased, she did not have proof of the same.
- 11.** PW2 testified that other than the agreement, she was issued with a certificate with an embossed signed stamp, and that from the agreement dated 30th March, 2010 the same does not contain the names of the defendants. She agreed that they were not parties to the agreement. On being shown the certificate in page 7 of the amended list of documents, PW2 testified that it is not dated. It was

her testimony that Peter Ochieng acknowledged receipt of Kshs.250,000/- for LR no. 11531/ 14/ 221 on behalf of the 1st defendant.

- 12.** Further, PW2 stated that the 2nd defendant was a witness to the property purchased by her late mother and that he witnessed when payments were made as he was part of the scheme. She reiterated that her mother signed the agreement on her behalf. With regard to the receipt by Orbit Resettlement Scheme, PW2 testified that it was incorrect that payment was made to Orbit Resettlement Scheme and the 1st defendant, and according to the receipt that was issued on 17th June, 2014 she maintained that she did not pay orbit. While stating that she made payment to the 1st defendant, she disagreed that the 1st defendant is different from Hurlingham Scheme.
- 13.** PW2 further testified that she was informed that the LR no. would be disclosed to her and that the agreement would only have been living persons and present entities. She urged the court to rely on the changed LR no. because they were responding to what the 1st defendant had provided. She further stated that the development fee was paid on 25th July, 2013 after the land was measured by Pete Ochieng and Mr. Ongete who are not the defendants. She agreed that the property allocated to her as per the certificate of allocation

number 058 is different from that of the 2nd defendant who has certificate number 00576. She further stated that Ongete was the treasurer while Ayoo was the secretary but she has not brought them to court because Peter Ochieng sold the land to her. PW2 did not have the surveyor's plan.

- 14.** On re-examination, PW2 testified that the sale agreement shows that the vendor was to get instructions from the 1st defendant, and that her witness was one Collins Odhiambo who was acting for the 1st defendant as he provided his identity number. PW2 admitted having two receipts issued by Orbit and the 1st defendant. The said receipts, she stated bear the same address being 25012 - 00100, Nairobi. She stated that the same applies to the telephone number in the receipt by Orbit which is 0723492620 and it is similar to the 1st defendant's mobile number. She reiterated that the plot she purchased was no. 221 on LR 1153/14 and further occupied the same. While referring to the receipt dated 3rd May, 2013 she stated that it was payment of the development and the receipt dated 29th April, 2013 is for plot number 222 and 221 on LR 11531/14.
- 15.** She stated that she has been to the suit property, and that there was never a dispute. It was also her case that whatever was provided is what she developed, and the 1st defendant has never disowned the agreement.

- 16.** Saddam Mohammed (PW3) adopted his witness statement dated 28th January, 2024 as his evidence in chief. On cross-examination, he testified that the land reference referred to is 11531/14 and not LR 11531/10.
- 17.** Erick Mcmillan (PW4) adopted his witness statement dated 28th January, 2024 as his evidence in chief. On cross-examination, he testified that he paid Mr. Ongeti, Peter Ochieng and Mr. Oloo as contained in his witness statement. He stated that the 2nd defendant was in charge of security at the time he visited the site in 2010, and that he received money from him as well.
- 18.** On re-examination, PW4 stated that Peter Ochieng, Mr. Oloo and Mr. Ongeti were chairman, secretary and treasurer of the 1st defendant, and that the defendants were involved in the transaction. With the testimony of PW4, the plaintiff rested her case.
- 19.** The defence called one witness, and their case proceeded for hearing on 29th July, 2025. The 2nd defendant (DW1) adopted his witness statement dated 14th December, 2023 as his evidence in chief. He also produced Defendant's exhibits nos. 1 and 2 respectively. He identified the location and survey plan as DMFI -

3. He testified that the survey map relates to LR no. 11531/10, block number 229. He testified that he is a member of the 1st defendant who allocated to him the property known as 11531/10/229 which he is in occupation having been issued with a beacon certificate by the Surveyor.

20. DW1 testified that he does not know the plot claimed by the plaintiff as it is completely different from his. He also did not know the plaintiff, and that he was not a party to the sale agreement between the plaintiff and Peter Ochieng. It was his testimony that he worked with Peter Ochieng and he passed on 26th June, 2025. He stated that the late Peter was still alive when this matter was filed in 2023. Further, he stated that in the receipt between Peter Ochieng and the plaintiff, his phone number and names are indicated, but he was not aware of the same.

21. On cross-examination, DW1 testified that the witness of the purchaser in the agreement between the plaintiff and the 1st defendant is Collins Odhiambo Ondiek whose identity number is 22440405 is none other than himself. He also acknowledged the telephone number indicated but denied the signature. He testified that he has never reported that his signature has been forged. With regard to the membership certificate produced, he admitted that it is not dated and reiterated that his plot number is

1153/1/10/229. It was his testimony that the acreage for LR. No. 11531/10 is approximately 45 acres, and that it was sub-divided in the year 2009. Further, that several members including himself were allocated parcels of land, and his beacon certificate was issued in the year 2009. On being shown the certificate dated 22nd, May, 2023, he stated that the certificate was issued in 2009 and signed in 2023. He admitted that there is no official stamp in the said document.

- 22.** DW1 agreed that the postal address on his plot card is 25012 - 00100, Nairobi, and the telephone number, which is 0729740918, is the same as what is contained in the plaintiff's documents. He also admitted that his phone number appearing on the plaintiff's documents belongs to him. DW1 testified that Peter Ochieng entered into a land sale agreement, and that he knew him as he was the chairman of the 1st defendant. Further, that he does not know the person who developed the perimeter wall provided in the plaintiff's documents. He stated that he has not made any report of a land disputed anywhere, and that he does not know where the plaintiff stays. DW1 testified that the plot was allocated to him by the 1st defendant as a member. Further, that he has never met the plaintiff nor the husband.

- 23.** On re-examination, DW1 testified that he used to work with the late Philip Ochieng and that he had his details. He reiterated that his plot is completely different, and that there is no dispute on his property.
- 24.** The plaintiff filed her written submissions dated 22nd October, 2025. The defendants filed their written submissions dated 20th November, 2025. I have considered the pleadings, the testimonies and the evidence tendered as well as the written submissions filed. The issue for determination is *whether the suit is merited to warrant the grant of the orders sought.*
- 25.** At the centre of this dispute is the ownership of plot no. 221 on LR no. 11531/14 which the plaintiff alleges to have purchased in the year 2010. This property is said to be adjacent to her late mother's property. PW2 testified that sometime in the year 2023, PW3 informed her that part of the perimeter wall she had constructed had been brought down and that another wall had been put up blocking her gate. These acts she termed as trespass. While she did not know who put up the wall, as DW2 has denied the same, it is alleged that DW2 claims ownership of the same as having been allocated by the 1st defendant and which plot is LR. No. 11531/10/229.

- 26.** I have carefully analyzed the documentary evidence relied on by the parties. It is worthy to note that the plaintiff's claim that her property was contiguous to that of her late mother has not been refuted. The photographic evidence showing the property as well as the construction of the perimeter wall has also not been controverted.
- 27.** The agreement dated 30th March, 2010 is between Philip Ochieng and the plaintiff for the purchase of plot no. 221. On behalf of the purchaser, the person said to have signed the agreement is Angelina Ogot (her late mother). This agreement is witnessed by the 2nd defendant who denies that the signature in the agreement belongs to him. PW2 was further issued with a certificate no. 058. She also produced receipts evidencing payment of the same.
- 28.** On the other hand, DW2 while maintaining that he was allocated plot no. 229 on LR. No. 11531/10 and went on to produce two documents i.e. certificate no. 00576 and a beacon certificate dated 22nd August, 2023. It is interesting that this beacon certificate was obtained after all these years since the said allocation was done in the year 2009. The copy of location of the survey map has no evidentiary value at this stage as the same was not produced.

- 29.** There are two questions that need to be answered. One is the role of the 2nd defendant as the in charge of the day to day operations of the 1st defendant as contained in paragraph 3 of the amended plaint which has been admitted in paragraph 2 of the defence. Secondly, the ownership of the suit property. DW2 informed the court that he did not know who had invaded the suit property. As a person who is in charge of the day to day affairs of the 1st defendant, it leaves alot to be desired and one would question whether he is part of the scheme that is responsible for the trespass. In my view, it is likely that the 2nd defendant is very well aware of the person(s) said to be behind the unlawful interference of the property, if not himself.
- 30.** Secondly, the thread of evidence produced culminating into the ownership of the suit property by the plaintiff which I am mindful to note was said to be contiguous to that of her mother, is consistent which leads me to the conclusion that on a balance of probabilities, the plaintiff is the owner of plot no. 221. It is immaterial whether the suit property is unknown to the defendants as the phone numbers and address contained in the agreements and the certificates by the plaintiff and the 2nd defendant are similar and they belong to the 1st defendant. In other words, the agreement, and the certificate issued to the plaintiff all emanated from the 1st defendant.

31. If at all the 2nd defendant alleges that he owns plot no. 229 in LR. No. 11510, he has not demonstrated how he acquired ownership culminating to the issuance of the certificate. There is no agreement for sale or any other document to prove his acquisition of the property save for the certificate.

32. From the above, this court is satisfied that on a balance of probabilities, the plaintiff's amended plaint dated 10th July, 2024 has merit and it is hereby allowed in the following terms:-

i. A declaration is hereby issued that the plaintiff is the lawful owner of plot no. 221 situate on LR 11531/14 located within hurlingam housing estate in chokaa nairobi county.

ii. A permanent injunction is hereby issued restraining the defendants, their agents, servants or employees from trespassing, encroaching upon or from commencing and/or continuing with construction on plot no. 221 situate on LR. No. 11531/14.

iii. The plaintiff is awarded costs of this suit.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 25TH DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
25/02/2026.**

In the presence of:

Ms. Benson Agunga - Court assistant

Mr. Ochenda for the Defendant

Mr. Gituma for the Plaintiff

ORIGINAL