



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC NO. 197 OF 2017

GEORGE STEPHEN MACHARIA..... PLAINTIFF

VERSUS

ISSA NYAWIRI JABIRI

STANLEY NDINGURI WANJIRU

CHIEF LAND REGISTRAR.....DEFENDANTS

JUDGEMENT

1. The plaintiff sued the 3 defendants vide his plaint dated 5th June 2017 seeking the following reliefs;

- a. A declaration that the title issued to the 1st Defendant in respect of parcel of land Kwale/Diani Settlement Scheme 397 is null and void title to the 2nd Defendant regarding the parcel of land.**
- b. That the 3rd defendant do cancel or expunge from its records the title now held by the 2nd defendant.**
- c. That the 3rd defendant do transfer the said parcel of land to the plaintiff forthwith.**
- d. Any other relief the court may deem fit to grant.**
- e. Costs of the suit.**

2. The Defendants were served by substituted service through a notice published on the Daily Nation of 24th October 2018. No appearance was made by any of the defendants. Consequently the plaintiff requested for interlocutory judgement and set down the suit for formal proof on 25th April 2019.

3. On the said 25th April 2019 the plaintiff gave evidence. He stated that he has allocated the suit plot Kwale/Diani SS/397 in 1978. He paid a commitment fee after accepting the offer. That later he was issued with a certificate of outright purchase. He continued that in March 2015 when he was following up on his title deed, he discovered that the 1st defendant had obtained a title deed in 2002 before later transferring it to the 2nd defendant.

4. According to the plaintiff, the 1st defendant acquired his title fraudulently so he had no good title to pass to the 2nd defendant. After learning of the 1st & 2nd defendant's actions, the plaintiff lodged a complaint with the police and the village elder. That the village elder issued summons to the defendants to appear for a hearing but they did not turn up for the meeting. The plaintiff urged the court to nullify the registration of the defendants to enable him be issued with a title for his plot. He also stated that the land is still in vacant possession.

5. The plaintiff relied on the documents attached to his list filed on 6th June 2017. The documents included the following;

- i. Letter of offer dated 14th February 1978 and acceptance.**
- ii. Certificate of outright purchase dated 9th September 1997.**

iii. Receipt no AK 242502 of kshs500/=.

iv. Copy of green card Kwale/Diani.

v. Transfer of land in settlement scheme dated 17th December 2002.

vi. Letter dated 13th March 2015 land adjudication and settlement department addressed to Chief Land Registrar.

vii. Letter dated 24th April addressed to District Land Registrar from Ministry of Land and Housing and Urban Development.

viii. Summons from area Chief Kinondo Location, Ukunda, Kwale, addressed to Stanley Ndinguri Wanjiku dated 21st July 2015.

ix. . Letter form National Police Service dated 25th January 2016 addressed to District Land Registrar.

6. The evidence of the plaintiff has not been controverted by anyone or any document. From the plaintiff's documents, he has satisfied this court that he was indeed allotted the suit plot as per the letter of offer dated 14th February 1978. He was subsequently issued with a certificate of outright purchase dated 9th September 1997. The Director of Land Adjudication and Settlement Scheme vide his letter dated 13th March 2015 addressed to the Chief Land Registrar Nairobi also confirmed the plaintiff as their genuine allottee. The director requested the Chief Land Registrar to recall the documents issued in favour of the 1st and 2nd defendants and the same be expunged.

7. The statement of Mohamed Hussein (item no 11 of the list) also supported the plaintiffs' case. Mr Hussein stated that he and his village council of elders do not know both the 1st and 2nd defendants. That it is only the plaintiff they recognize as the owner of plot no 397, Diani.

8. In light of the evidence presented by the plaintiff, he has satisfied this court that he is the legal owner of parcel no 397. Accordingly I enter judgement in his favour as prayed in the plaint.

Dated, Signed and Delivered at Mombasa this 31st day of July 2019.

A. OMOLLO

JUDGE.