



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. CASE NO 1029 OF 2016

JAMES NJENGA THUO (Suing as the Legal Representative of the

Estate of the late FRANCIS THUO WANYOIKE).....PLAINTIFF

VERSUS

EMBAKASI RANCHING COMPANY LIMITED.....DEFENDANT

JUDGMENT

1. Francis Thuo Wanyoike (the deceased) brought this suit against Embakasi Ranching Company Limited on 24/8/2016. He subsequently died on 22/6/2017. On 31/7/2018, the court allowed his personal representative, James Njenga Thuo, to be substituted in his place. The deceased plaintiff contended that he purchased one ordinary share in the defendant company in 1978 and was issued with Share Certificate Number 408 on 1/8/1978. He was thereafter allocated Plot Number H487. Subsequent to that, he was additionally allocated Plot Number H487B as a bonus Plot. The two Plots represented the one share which he held in the company. He added that he subsequently paid all the requisite disbursements to enable the defendant undertake survey and process titles for the two plots in his name. The deceased further contended that the defendant through its directors were intent on swindling him the two plots in that they had deliberately refused to issue him with beacon certificates despite receiving the requisite payments from him.

2. Aggrieved by the defendant's directors' conduct, he brought this suit seeking the following verbatim prayers:

a) A declaration that the plaintiff is the absolute, rightful and bonafide owner of Plot Nos. H487 and H887B.

b) A mandatory order directed to the defendant ordering it, its officials and/or successors in title, to forthwith and unconditionally initiate the process of issuance of title deeds to the Plaintiff with respect to Plot Nos. H487 and H487B.

c) A mandatory order directed to the defendant ordering it, its officials and/or successors in title to forthwith and unconditionally issue the plaintiff with beacon certificates with respect to Plot Nos. H487 and H487B and further point out the beacons to the plaintiff.

d) A permanent injunction restraining the defendant, its officials, agents, employees, servants or anyone claiming under them from trespassing upon, ingressing into, selling constructing upon, re-allocating, disposing off or in any other manner interfering with the plaintiff's quiet possession and ownership of Plot Nos. H 487 and H487B

e) Costs of this suit and any other relief that this honourable court may deem just and fair to order.

3. On 15/9/2016, the deceased filed an affidavit of service by Lucas Maingi, indicating that the defendant had been served on 8/9/2016. On 13/12/2016, the deceased filed a request for judgment, prompting the Deputy Registrar to direct that the suit be set down for hearing as an undefended cause. Hearing proceeded on 19/6/2019. James Njenga Thuo testified as PW1. He adopted the deceased's signed written statement dated 24/8/2016 as his sworn evidence in chief. His testimony was as summarized hereunder.

4. He was the administrator of the estate of the late Francis Thuo Wanyoike. This suit was filed by his late father, the late Francis Thuo Wanyoike and he came in as the personal representative of the deceased. He added that on 24/8/2016, his late father signed a written statement which was filed in this suit prior to his demise. He adopted the statement as part of his sworn evidence in chief.

5. He added that the deceased became a shareholder of the defendant company in 1978 by purchasing one (1) ordinary share in the defendant company and he was issued with Share Certificate Number 408 on 1/8/1978. He was thereafter allocated Plot Number H487. He was subsequently allocated Plot Number H487B as a bonus plot. He subsequently paid survey, engineering and registration fees as demanded by

the defendant. He further paid Kshs 5,000 as site visit fee and Kshs 15,000 as beacon certificate fee as demanded by the defendant.

6. Despite the deceased complying with all the demands of the defendant company, the defendant company had failed to issue him with beacon certificates relating to the suit properties and were intent on dispossessing the deceased the two plots. He produced the following documents as exhibits: (i) Share Certificate No 408 issued to the deceased by the defendant on 1/8/1978; (ii) Receipt dated 24/6/2010 in respect of Kshs 5000 paid as site visit fee; (iii) Receipt dated 15/8/2013 in respect of Kshs 15,000 paid as beacon certificate fee; Receipt dated 21/4/2005 for Kshs 2,000; (v) Receipt dated 25/8/1993 for Kshs 6,000; (vi) Receipt dated 28/5/1982 for Kshs 500; (vii) Receipt dated 30/10/89 for Kshs 500; (viii) Receipt dated 28/8/1989 for Kshs 500; Receipt dated 4/12/1989 for Ksh 500; (x) Receipt dated 17/7/1989 for Kshs 2,000; and (xi) Allotment Letter dated 28/11/1982 issued by the defendant and signed Godfrey Muhuri Muchiri.

7. Mr Wachira, counsel for the plaintiff subsequently submitted that the defendant allocated the deceased the two plots as an original member of the company. The deceased paid all the charges demanded by the defendant. The defendant had been taking the deceased in circles and had failed to show him the physical location of the two plots. Consequently, the deceased had ownership documents but no physical land. Counsel added that there was a government directive on issuance of tiles and the estate of the deceased was apprehensive that it could be left out of the exercise. He urged the court to grant the prayers sought in the plaint.

8. I have considered the pleadings, the evidence and the submission by the plaintiff. I have also considered the relevant legal framework. The deceased's claim is undefended.

9. From the materials presented to the court, there is uncontroverted evidence that the deceased became a share-holder of the defendant company on 1/8/1978 when he was issued with Share Certificate Number 408, comprising of one ordinary share. Subsequently, the deceased made several payments to the defendant on diverse dates between 1978 and 2013. On 28/11/1982, the defendant company issued to the deceased a letter of allotment, allocating him Plot Number H487. The deceased contended that he was subsequently allocated Bonus Plot Number H487B. There is indeed an endorsement on the Letter of Allotment by the defendant indicating that the Bonus Plot was indeed allocated to the deceased by the defendant.

10. In the absence of any defence or controverting evidence by the defendant, I am satisfied that the estate of the late Francis Thuo Mwangi has proved its case against the defendant on a balance of probabilities. Consequently, the plaintiff is granted the following orders in tandem with the prayers sought in the plaint:

a) It is hereby declared that the estate of the late Francis Thuo Wanyoike is the rightful owner of Plot Number H487 and H487B within Embakasi Ranching Company Limited Scheme.

b) The defendant together with its directors and officials are ordered to process titles to the two plots in the name of James Njenga Thuo as administrator of the Estate of Francis Thuo Wanyoike.

c) The defendant together with its directors and officials are ordered to issue the administrators of the Estate of Francis Thuo Wanyoike with beacon certificates relating to the two plots.

d) The defendant together with its directors and officials are restrained against re-allocating the said plots to any other person or disposing them.

e) The defendant shall bear the plaintiff's costs of this suit.

DATED, SIGNED AND READ AT NAIROBI ON THIS 29 TH DAY OF JULY 2019.

B M EBOSO

JUDGE

In the presence of:-

Court Clerk - June Nafula