



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 28 OF 2013**

**CHEGE NGUGI CHEGE.....PLAINTIFF**

**VERSUS**

**KANTAFU COMPANY LIMITED.....DEFENDANT**

**JUDGMENT**

1. In the Plaintiff dated 15<sup>th</sup> August, 2012, the Plaintiff averred that he is a member and shareholder of the Defendant and that having casted his ballot, he was allocated Plot No. 342 Phase 14 situated in L.R No. Mavoko Township Block 3/2103 (*the suit property*).
2. The Plaintiff averred in the Plaintiff that it was a term of the Agreement between himself and the Defendant that the Defendant will deliver vacant possession of the suit land pending the issuance of the title; that he put up residential houses on the suit property which he let out to tenants and that in March, 2010, the Defendant demolished his houses. The Plaintiff's claim is for an order of injunction and damages for breach of contract.
3. In its Defence, the Defendant admitted that it sold Plot No. 342, which was a sub-division of Plot No. 441, to the Plaintiff; that it gave to the Plaintiff vacant possession of the said Plot No. 342 which was one of the sub-division of Plot No. 441 and that arising out of interference with its right to parcel No. 441, it commenced Machakos HCCC No. 15 of 2007 against one Jonah Paul Nguli, Francis Ngige Waweru and Lukenya Ranching and Farming Co-operative Society Limited and that in that suit, it was restrained by the court, together with the Defendant and its agents, from developing any portions of Plot No. 441.
4. The Defendant averred that it was not a party to the demolitions complained of by the Plaintiff and that the Plaintiff's claim against it cannot succeed.
5. In his evidence, PW1 reiterated the contents of his Plaintiff. It was the Plaintiff's evidence that having been allocated the suit property by the Defendant, it was a tacit term of the Agreement that the Defendant would deliver to him vacant possession of the land; that based on that understanding, he built a residential house on the land and that on 19<sup>th</sup> March, 2010, people claiming to be the Defendant's agents demolished his house alleging that he was a trespasser.
6. PW1 informed the court that although the Defendant informed him that it was one Francis Ngige Waweru who demolished his house, he came to realize that the Defendant co-operated with him in the said demolition; that Mr. Ngige was also claiming the same land and that the Defendant refused to assist him when his house was demolished.
7. In its Defence, the Defendant's Chairman, DW1, informed the court that the Defendant is a land buying company; that the Plaintiff was one of their members and that he was allocated the suit land by the Defendant after balloting for it.
8. It was the evidence of DW1 that they showed the Plaintiff the location of the suit land and that the Plaintiff put up structures on the land. According to DW1, the person who demolished the Plaintiff's building was one Francis Ngige Waweru who was claiming the same land; that the Defendant sued the said Ngige in Machakos HCCC No. 15 of 2007 (O.S) and that the Defendant never sent the said Francis Ngige to demolish the Plaintiff's house.
9. In his submissions, the Plaintiffs' advocate submitted that the court should carefully peruse the Plaintiff's statement and documents and arrive at the inescapable conclusion that the Plaintiff has been able to establish ownership to the degree of proof; that the Defence witness confirmed that the Plaintiff is the owner of the suit property and that the Defendant's witness admitted that the Defendant has not given to the Plaintiff vacant possession of the suit land.
10. The Defendant's advocate submitted that the Plaintiff was not present when the demolition of his structures erected on the suit land was undertaken; that the person who undertook the demolition of the Plaintiff's structure was one Ngige Waweru and that the Defendant had sued the said Ngige in a different matter.

11. It is not in dispute that the Plaintiff is or was a member of the Defendant. The Defendant has also not disputed the fact that it sold to the Plaintiff a parcel of land known as Plot No. 342 Phase 14 situated on L.R. No. Mavoko Township Block 3/2103.

12. The Defendant's witness informed the court that it indeed put the Plaintiff into possession of suit land. It is after being put in possession that the Plaintiff constructed houses on the land, which were later demolished.

13. Although the Plaintiff has alleged that it is the Defendant's agents who demolished the structures on the suit land, he did not offer any evidence to that effect.

14. The Defendant produced evidence to show that it sued one Francis Ngige Waweru and others in Machakos HCCC No. 15 of 2007 (O.S) in respect to the bigger portion of land from which the suit land was hived from. Indeed, the Defendant exhibited an order dated 15<sup>th</sup> October, 2018 in which the court restrained the said Francis Ngige Waweru from developing or constructing any structures on parcel of land known as Mavoko Township Block 3/2103 until the determination of the suit.

15. The evidence by the Defendant's witness that it is not its agents that demolished the structures standing on the suit property is believable. Indeed, having averred in their Defence that the demolition of the structures standing on the suit property was done by Francis Ngige, the Plaintiff should have sought the leave of the court to enjoin the said Francis Ngige in these proceedings.

16. Considering that the Plaintiff is in possession of the suit property, and in the absence of evidence to show that it is the Defendant who demolished the structures erected on the suit property, I find that the Plaintiff has not proved his case on a balance of probabilities.

17. For those reasons, I dismiss the Plaintiff's Plaint dated 15<sup>th</sup> August, 2012 but with no order as to costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4<sup>TH</sup> DAY OF OCTOBER, 2019.**

**O.A. ANGOTE**

**JUDGE**