



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

MILIMANI LAW COURTS

ELC CASE NO.1154 OF 2015

LUCY WANJIRU NJERU.....PLAINTIFF

=VERSUS=

JOSEPH OKWARO OLENDU.....DEFENDANT

JUDGEMENT

1. The Plaintiff filed this suit against the Defendant in which she sought the following reliefs:-

a. A declaration that the Plaintiff is the lawful owner of plot number 0487 LR No.11531/14 Hurlingham Development Scheme.

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 Hurlingham Development Scheme Chokaa.

c. Cost of this suit

d. Any other relief deemed apt and fitting.

2. The Defendant filed a defence but never attended court during the hearing despite his lawyers having been served. The hearing therefore proceeded ex-parte . The Plaintiff testified that in or around 9th August 2013, she purchased a plot identified as plot 0487 comprised in LR 11531/14 which had been put up for sale by Hurlingham Squatters Development. The Plaintiff was taken to the site by a surveyor who had been engaged by Hurlingham Squatters Development.

3. The Plaintiff paid for the plot by instalments and upon completion of payments, she was issued with certificate of ownership No. 0345 and ballot number 782. She was then allowed to take possession and she started constructing a house. She constructed upto the lintel but she ran out of funds. She later re-commenced construction and was again stuck on the first floor. She was later called by a neighbour who informed her that there was someone who was continuing with construction. She went to the site where she found the defendant who alleged that he was constructing on plot No.0485 which he had allegedly purchased from one Lawrence Mutugi Kirimi. She reported the defendant to Kayole Police station. The defendant stopped constructing for a while before he again went on with construction and in 2019 February /March, the defendant moved into the unfinished buildings where he remains to-date.

4. The Plaintiff called PW1 Benson Ochoko the Chairman of Hurlingham Squatters Development who testified how the Plaintiff went to their offices where she stated that she wanted to purchase a plot. The Plaintiff was given a surveyor who took her to the ground and showed her plot 0487 after which she was given a beacon certificate and a ballot which was duly signed by the surveyor. Upon payment of the purchase price, the Plaintiff took possession and started construction. Later the defendant invaded the Plaintiff's plot claiming that the plot had been sold to him by one Mr Kirimi. This witness stated that the signature on the documents held by the defendant is not his and that the one of their secretary is a forgery. He confirmed that plot 0487 belongs to the Plaintiff.

5. PW3 Nicholas Omondi Omedi is a surveyor by profession. This witness testified that he was the one who was engaged by Hurlingham Squatters Development to subdivide LR No 11531/14. After the subdivision, he was retained as surveyor of Hurlingham Squatters Development. When the Plaintiff went to purchase the suit property, he is the one who accompanied her and showed her plot 0487 which was vacant. After payment, he issued the Plaintiff with a beacon certificate and ballot No.782 which he signed. This witness confirmed that plot 0485 is both on the map and on the ground but that it is different from plot No.0487. He stated that whenever there is a sale by Hurlingham Squatters Development, he has to be involved and that he does not know Mutugi Kirimi who purported to sell plot 0485 to the defendant.

6. I have considered the evidence adduced by the Plaintiff and the two witnesses. This evidence is not controverted. The Plaintiff produced

certificate No.0345 in respect of plot No.0487 . The certificate was issued on 9th August 2013. The Plaintiff also produced ballot No.782 duly signed by PW3 the surveyor who showed her the suit property. She also produced a receipt for Kshs.20,000/= issued on account of survey fee and ballot fee. The chairman of Hurlingham Squatters Development had written a letter on 18th September 2015 confirming that the plot in issue belonged to the Plaintiff. This letter was produced and the chairman himself testified before the court.

7. The certificate held by the defendant was also produced. This certificate is No. 857 and relates to plot No. 0485. This certificate was issued on 5th November 2014. This is the certificate which PW1 denounced as a forgery. The certificate for Lawrence Mutugi Kirimi in respect of Plot No. 0485 was denounced both by the chairman (PW1) and the surveyor (PW3).

8. As I said hereinabove, the defendant only filed a defence where he made a general denial. He never came to court to give evidence. In the case of *CMC Aviation Ltd – Vs- Cruisair Ltd (No 1) 1978 KLR 103; [1976-1980] KLR 835*, Madan J (as he then was) stated as follows:-

“Pleadings contain the averments of the parties concerned. Until they are proved, or there is an admission of them or any of them, by the parties, they are not evidence and no decision could be founded upon them. Proof is the foundation of evidence. Evidence denotes the means by which an alleged matter of fact, the truth of which is submitted for investigation. Until their truth has been established or otherwise, they remain unproven. Averments in no way satisfy, for example, the definition of “evidence” as anything that makes clear or obvious; ground for knowledge, indication or testimony; that which makes truth evident, or renders evident to the mind that is truth.”

9. The Defendant having not adduced any evidence to controvert the Plaintiff’s evidence, I find that the evidence of the Plaintiff remains uncontroverted. The evidence is credible. I therefore find that the Plaintiff has proved her case on a balance of probabilities. I enter Judgement for the Plaintiff against the defendant in terms of prayers (a),(b) and (c) of the Plaint.

Dated, Signed and delivered at Nairobi on this 14th day of November 2019.

E.O.OBAGA

JUDGE

In the presence of:-

M/s Kirui for M/s Matata for Plaintiff

Court Assistant : Hilda

E.O.OBAGA

JUDGE