



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 712 OF 2011

LIVINGSTONE WAHONE MUGUTU.....PLAINTIFF

VERSUS

RUMORS INVESTMENTS LIMITED.....1ST DEFENDANT

AGRICULTURAL FINANCE CORPORATION.....2ND DEFENDANT

NAIROBI CITY COUNTY.....3RD DEFENDANT

RUEL NJUGUNA KAMANDE.....4TH DEFENDANT

FRANCIS GITARI NDAMBIRI.....5TH DEFENDANT

JUDGEMENT

1. Through the plaint that was amended further and filed in court on 15/10/2019, the Plaintiff seeks a declaration that Nairobi/Block 107/984 which he bought at an auction rightfully belongs to him and cancellation of Nairobi Block 107/1630 and Nairobi Block 107/1614 which he claims are subdivisions of Nairobi Block 107/984. The Plaintiff seeks vacant possession of Nairobi/Block 107/984 and a permanent injunction to restrain the Defendants from dealing with this parcel of land. He further seeks an order that the rental income from the suit premises should be paid to him in addition to mesne profits payable from May 2011 to date from the 3rd to 5th Defendants.

2. In the alternative, the Plaintiff seeks that the 2nd to 5th Defendants be condemned to compensate him a sum of money equivalent to the value of the suit premises; compensation in form of mesne profits from May 2011 until full compensation; a refund of the purchase price together with 12% interest with effect from 6/6/2011 as against the 2nd Defendant; and an order to rectify the land register to have him registered as the owner of Nairobi/Block 107/984.

3. The 1st and 4th Defendants filed a defence on 28/3/2013 denying the Plaintiff's claim. They averred that the Plaintiff did not conduct due diligence before purchasing the disputed plot from the 2nd Defendant. Further, they urged that the Plaintiff could not have purchased two flats worth over Kshs. 20,000,000/= at Kshs 5,000,000/= at the auction as he claimed. They averred that they were allocated plot number 392 Umoja II Zone 8 by the 3rd Defendant which is different in number and size from Nairobi Block 107/984 which the Plaintiff claims. They added that their development plans in respect of plot number 392 Umoja II Zone 8 were duly approved by the 3rd Defendant who issued a certificate of occupation once they completed construction.

4. The 2nd Defendant filed a defence on 10/2/2012 admitting that indeed the Plaintiff bought Nairobi Block 107/984 which was sold at an auction after the previous owner, Patricia Lindi Tatua defaulted in settling the loan advanced to her by the 2nd Defendant for which she had offered this land as security. The 2nd Defendant averred that the Plaintiff bought the parcel of land at a public auction after viewing the property and verifying the details for himself in accordance with the conditions of sale of the public auction.

5. The 5th Defendant in his amended defence filed on 13/9/2018 denied the Plaintiff's claim and maintained that his plot differed from the Plaintiff's plot both in size and number. The 5th Defendant averred that he is the owner of plot number 286 Umoja II Zone VIII which was allocated to him by the 3rd Defendant on 20/12/1996. The 3rd Defendant approved his development plan and issued a beacon certificate confirming the boundaries of his plot. He faulted the Plaintiff for purporting to purchase a plot valid at Kshs. 20,000,000/= for Kshs. 5,000,000/=.

6. The hearing of this suit which commenced on 13/2/2017 and took very long to be concluded owing to application for adjournment by

Plaintiffs. The other cause for the delay in finalising the hearing was the sad demise of Mr. Mugambi Advocate who appeared for the Plaintiff. The matter could not proceed for hearing when Mr. Mugambi was taken ill.

7. The Plaintiff called three witnesses. Samuel Kipkorir Ng'eno who was the Town Clerk for City Council of Nairobi (the Council) from September 1996 to September 1997 gave evidence. He worked at the Council from February 1994 to September 1997. He stated that the construction of Umoja I to VIII were funded by the World Bank and that it pulled out before Zone VIII was developed. The Council decided that plots in Zone VIII would be allocated to individuals to develop using the same designs that World Bank had utilised. The plots were allocated through the process of advertisement which gave people time to apply. Successful applicants were given letters of allotment by the Town Clerk.

8. He denied signing the letter of allocation dated 20/12/1996 at the time when he was the Town Clerk and pointed out that the letterhead should have read City Council of Nairobi and not Nairobi City Council. The signature appearing on letter was not his even though the letter bore his name as the author. He stated that the numbers given for the plots created in Zone VIII changed after the survey was done.

9. The Plaintiff gave evidence. He stated that he purchased Nairobi Block 107/984 in 2011 following an advertisement placed in *The Standard* of 11/4/2011. He called the auctioneers who gave him directions to where the land was situated. He visited the land and confirmed that it was indeed the land described in the advertisement. He expressed interest and attended the public auction on 5/5/2011. He bid for the land and was declared the highest bidder at Kshs. 5,000,000/=. He paid the purchase price and the 2nd Defendant transferred the land to him. He obtained the rates clearance certificate and consent to transfer from the 3rd Defendant. Nairobi Block 107/984 was transferred to his name on 22/6/2011. He went to the 3rd Defendant's Valuation Department and got the records changed to reflect his name in place of Patricia Lindi Tatua. When he instructed Mamuka Valuers to collect rent from the premises, the 1st Defendant went to court and obtained an injunction to restrain him from dealing with the suit land. He claimed that the 4th and 5th Defendants have been collecting rent of Kshs. 300,000/= every month from the suit property and that the 3rd Defendant continued to receive rates from him.

10. Isaac K. Langat, the auctioneer who conducted the auction at which Nairobi/ Block 107/984 was sold gave evidence. He confirmed that his firm Kolato Agencies conducted the auction after issuing the requisite notices and that the Plaintiff bought the land. The 2nd Defendant executed the discharge of charge and handed it over to the Plaintiff. He confirmed that the land sold at the auction had two flats and was sold for Kshs. 5,000,000/= to the Plaintiff. He produced a copy of the advertisement and the memorandum of sale.

11. James Githaiga Thirikwa gave evidence. He valued Nairobi/Block 107/984. He produced two reports dated 13/3/2017 and 10/10/2017. He visited the land on 7/10/2017. He stated that he compared the rents for neighbouring plots in arriving at the rents mentioned in his report. He did not know about plot numbers 286 and 392. He confirmed that the plot was developed and that he came to learn that the plot was owned by two people.

12. The 1st, 2nd, 3rd and 4th Defendants did not call any evidence. The 5th Defendant gave evidence. He stated that he is the registered proprietor of plot number 283 Umoja II Zone VIII which the 3rd Defendant allocated to him vide the letter dated 20/12/1996. He did not know how the Plaintiff acquired his parcel of land which is different in size and plot number from his plot. He was issued a beacon certificate dated 28/7/2004 in respect of his own plot. He erected a flat on his land after obtaining building approvals from 3rd Defendant's Planning Department. He faulted the 2nd Defendant and Plaintiff for not carrying out due diligence on the status of the plot they were transacting on. He relied on the letter he got from the 3rd Defendant confirming that he owned the plot when the dispute over its ownership arose. He took time before paying the Council for the plot. He confirmed that the 4th Defendant was his neighbour and had also developed his plot. He clarified that his plot was Nairobi/Block 107/1614 for which he pays rates. He developed his plot in 2007.

13. Parties filed submissions which the court has considered. Should the court grant the orders sought by the Plaintiff? The Plaintiff submitted that he lawfully acquired his plot and that defences filed were evasive and were mere denial. The Plaintiff urged that the Defendants had failed to tender evidence to show how they acquired the suit plot. He submitted that the Land Registrar did not register Nairobi/Block 107/286 or parcel number 1614 in the 5th Defendant's name. The Plaintiff maintained that there were contradictions and inconsistencies in the 5th Defendant's claim.

14. The 5th Defendant relied on the report dated 30/7/2012 from the Ministry of Lands prepared following the court's order directing parties to carry out a survey on the location of Nairobi/Block 107/984 and plot number 392 of Umoja II Zone. The report concluded that Nairobi Block 107/984 was not the same as plot number 392 Umoja II Zone VIII which is now Nairobi Block 107/1613.

15. The Plaintiff did not lead evidence or call a surveyor to give evidence to establish that Nairobi/Block 107/984 was subdivided to create Nairobi Block 107/1613 and 1614 or the nexus between these plots bearing different numbers. It is not clear whether by the time the 2nd Defendant transferred Nairobi/Block 107/984 to the Plaintiff Patricia Lindi Tatua had developed the plot which she charged to the 2nd Defendant. The court prefers the evidence of the 5th Defendant who stated that he developed the block of flats on his plot and also saw the 4th Defendant construct on his land. The Plaintiff did not lead evidence on the physical location of his plot.

16. The Plaintiff failed to prove his claim over Nairobi/Block 107/984 on a balance of probabilities. The court declines to grant the prayers sought in the Amended Plaint dated 11/10/2019. Each party will bear its own costs.

Dated and delivered at Nairobi this 13th day of December 2019

K.BOR

JUDGE

In the presence of:-

Mr. D. Owang for the Plaintiff

Ms. N. Miya holding brief for Kwengu for the 1st and 4th Defendants

Mr. P. Malanga holding brief for R. Ngaira for the 2nd Defendant

Ms. A. Merichi for the 3rd Defendant

Ms. C. Mpoza for the 5th Defendant

Mr. V. Owuor- Court Assistant