



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 105 OF 2017**

**REDEEMED GOSPEL CHURCH.....PLAINTIFF**

**VERSUS**

**GRACE WANJIRU.....DEFENDANT**

**JUDGEMENT**

1. The Plaintiff, a church organisation registered under the Societies Act, filed suit on 13/2/2017 seeking a permanent injunction to restrain the Defendant or her agents from trespassing on, demolishing any buildings or structures or in any other way interfering with the Plaintiff's occupation of the land known as plot number RUA V10522 Jet View Estate together with the costs of this suit.
2. The Plaintiff claims to be the beneficial owner of Plot No. RUA V10522 Jet View Estate having purchased it from Jack Kamau Wachira. It claims to have complied with the terms of the sale by making the requisite payments and that it physically took possession of the plot.
3. The Plaintiff has erected semi-permanent structures on the plot which it uses as a church for purposes of worship. In December, 2016, the Plaintiff claims that hired goons descended upon the plot and threatened to demolish its structures but they were successfully repulsed by the police and the local community. On investigation, the Plaintiff discovered that they were the Defendant's agents.
4. The Defendant filed a defence and counter claim on 17/3/2018 denying the Plaintiff's claim. She avers that plot number RUA V10522 Jet View Estate does not exist. She claims the Plaintiff has trespassed on her plot being number P118- L.R. No. 105/5640 which was allocated to her grandfather J. Gachui alias Francis Gachui Kimani by Embakasi Ranching Limited in 1991. Upon his demise, the administrators of his estate who are the Defendant's grandmothers sold the plot to the Defendant together with Plot No. P117. The Defendant counterclaimed for a declaration that she is the legal owner of plot number P118-L. R. No. 105/5640.
5. Parties agreed to maintain the status quo on 15/3/2017 in which both parties were restrained from selling, transferring or constructing further on the suit land until the suit is heard and determined.
6. The matter was heard on 9/11/2017. The Plaintiff called 3 witnesses. Reverend Patrick Maweu Makewa a Senior Pastor in the Plaintiff church gave evidence. The Pastor testified that the Plaintiff purchased Plot No. RUA V10522 Jet View Estate in December 2009 from Jack Kamau Wachira. The land was previously owned by Embakasi Ranching Company Limited which subdivided and gave it to its shareholders. The Plaintiff purchased the plot from a member of Embakasi Ranching Limited. Upon purchase, Embakasi Ranching Limited transferred the share certificate to the church which erected semi-permanent structures in 2010 for use as a church for purposes of worship.
7. The church has been in possession of the suit land since 2010 even though it has not been issued a title over it. It enjoyed quiet possession until December, 2016 when a group of hired goons invaded the premises and threatened to demolish the church. The Plaintiff reported the incident to the police and was advised to pursue the matter with Embakasi Ranching Company Limited for resolution. The Defendant took possession and commenced construction on a portion of the suit plot prompting the Plaintiff to move the court.
8. The pastor stated that he was introduced to Jack Kamau Wachira by officials of Embakasi Ranching Limited as someone who had a plot that he wished to sell. The church bought the plot for Kshs. 750,000/=. He stated that the balance of Kshs. 550,000/= was paid to Alice Wangui Maara on behalf of the seller. However, he did not have any documents from Embakasi Ranching to show that Jack Kamau Wachira was the owner of the plot. The church paid Kshs. 76,000/= on 24/5/2016 for transfer. He stated that the Plaintiff was not a shareholder of Embakasi Ranching.
9. The church runs a school known as Grace Academy on the suit plot being plot number 105/22. On cross examination, he stated that the church provided documents to Nairobi City County but the City County omitted the V in the plot number while issuing the permit to the Plaintiff.
10. He also stated that Alice Wangui Maara who witnessed the sale agreement was an employee of Embakasi Ranching Company Limited and that the sale agreement was executed in the offices of Embakasi Ranching Limited. He stated that the Church enjoyed quiet possession of

the suit plot for more than 7 years. The Plaintiff did not call Jack Kamau Wachira or Alice Wangui Maara who it dealt with when it purchased the suit land to give evidence.

11. Two other worshippers who are members of the Plaintiff also gave evidence. They confirmed that they had been attending the church since it was constructed. The 2<sup>nd</sup> witness stated that the church was constructed in 2009 while the 3<sup>rd</sup> witness testified that it was constructed in 2011. On cross examination the 2<sup>nd</sup> witness clarified that he had been attending the Plaintiff church since 2010.

12. The Defendant stated in evidence that she bought the suit property from her late grandmothers, Wanjiku Njuguna Gachui and Wangui Njuguna Gachui who were the administrators of her late grandfather for Kshs. 3 million. Her grandfather was a member of Embakasi Ranching through share certificate number 3108.

13. She stated that plot number P118 is now Nairobi Block 105/5640. She produced the map which shows the physical location of the suit property. She confirmed that she was not one of the beneficiaries named in the certificate of confirmation of grant over her late grandfather's estate.

14. She was to take possession but did not know where the plots were. She went looking for the plots and was shown the plot by a lady who had been looking after the plots when her grandfather was alive. She learnt in 2012 that there was a development and wrote a letter to the church in 2015. She claims to own plot numbers 117 and 118. She leased out plot number 117 and started developing plot number 118. She claims to have been in possession of the plot since 2011.

15. After buying the two plots from her grandmothers she went to the offices of Embakasi Ranching Limited and asked them the point out the plots to her. They asked her to pay Kshs. 20,000/= in 2016. The Defendant is now living on the suit property. She denied that the Plaintiff had been hindered from accessing its church. She maintained that the church building is on her land. She denied having been summoned by the police and stated that she was summoned by Embakasi Ranching Company in January 2017 who asked the Plaintiff to vacate the suit land.

16. Neither the Plaintiff nor the Defendant called a witness from Embakasi Ranching Company Limited to confirm who the Company considers to be the legitimate owner of the suit land.

17. The two issues the court has to determine are: -

i. Is the suit property Plot No. RUA V10522 Jet View Estate or it is plot number P118 - L.R. No. 105/5640?

ii. Between the Plaintiff and the Defendant, who has a superior title to the suit property?

18. The court has analysed the evidence adduced at the hearing. The Plaintiff entered into a sale agreement with Jack Kamau Wachira on 18/12/2009. In that agreement, the purchase price was stated to be Seven Hundred and Fifty Thousand Shillings but was indicated to be Kshs 150,000/= in figures. It was executed by Jack Kamau Wachira while Reverend Patrick Maweu Makewa executed it on behalf of the Church.

19. The agreement is endorsed by hand that a deposit of Kshs. 400,000 had been paid on 18/12/2009 ostensibly to Jack Wachira, who was the seller; and that the balance of Kshs. 150,000/= was to be paid by 31<sup>st</sup> January, 2010; and the remaining balance of Kshs. 200,000/= was to be paid by 31<sup>st</sup> March, 2010. If indeed a deposit of Kshs. 400,000/= was paid on 18/12/2009 then the balance of the agreed purchase price was Kshs. 350,000/=.

20. Alice Wangui Maara acknowledges receipt on the reverse of the sale agreement stating that she received Kshs. 400,000/= being a deposit for RUA plot V10522 on behalf of the seller Jack Kamau Wachira on 19/12/2009. She further acknowledges receipt of Kshs. 150,000/= on behalf of the seller Jack Kamau Wachira on 29/1/2010.

21. From this it is not clear if the deposit of Kshs. 400,000/= was paid on 18/12/2009 or 19/12/2009. It is also not clear whether the deposit of Kshs. 400,000/= was paid to Jack Kamau Wachira or Alice Wangui Maara. There is no mention of the payment of the difference of Kshs. 200,000/=.

22. The non-member certificate of plot ownership issued by Embakasi Ranching Company Limited to the Plaintiff for plot number V10522 is signed and stamped by the vice chair on 1/4/2016. No explanation was given as to why the non-member certificate of plot ownership was issued in 2016 and not in 2009 when the Plaintiff bought the plot yet it claims the sale was done in the offices of Embakasi Ranching Company Limited.

23. The reference on the non-member certificate of plot ownership reads NMC030970. The receipt issued by Embakasi Ranching Company Limited on account of other fees paid by the Plaintiff on 24/5/2016 is for plot number V10522. The company also issued a receipt to the Plaintiff on 18/4/2006 for payment of Kshs. 32,000/= indicated to be for S/5492/06 There is also a receipt issued by Embakasi Ranching to the Plaintiff bearing the date of 18/4/2006 showing the Plaintiff had paid Kshs. 32,000/= on account of allocation letter. The sale agreement was executed in 2009 so it is not feasible that the Embakasi Ranching could have received payment from the Plaintiff prior to purchasing the plot.

24. The Plaintiff relied on the Hydrological Survey Report dated 24/6/2011 prepared at its request when it wanted to sink a borehole at the suit land, together with the Borehole Completion Report and the Site Log Completion report dated 30/10/2012. These reports do not in any way confirm who the owner of the suit plot is. The plot number in the reports is indicated as V.10522 and the project is indicated as Grace Community Church Borehole.

25. Copies of the single business permits issued by Nairobi City County in 2012 and 2016 show that the applicant is Grace Academy which is engaged in a small private institution. The plot number on the permits is 105/22.

26. The Plaintiff also produced photographs of the structures it has erected on the suit land including photographs of the tanks on the land and those of small children attending a school. The sign post at the suit land reads 'Redeemed Gospel Church, Jet View, Grace Community Centre'.

27. The Defendant produced copies of the sale agreement dated 15/4/2011 which she entered into with Wanjiku Njuguna Gachui and Wangui Njuguna Gachui with respect to plot numbers P117 and P118 Embakasi Ranching Company Limited, share certificate number 3108 for two shares. The consideration is stated to be Kshs. 3 million for both plots and was payable directly to the sellers on the completion date. The vendors were selling as administrators of the estate of the late Njuguna Gachui pursuant to the certificate of confirmation of grant dated 4/11/2002 issued in **Nairobi Succession Cause Number 38 of 2002**.

28. The copy of certificate of confirmation of grant lists shares in Embakasi Ranching Company S/C No. 3108 among the properties to be distributed between the beneficiaries; who are Wanjiku Njuguna Gachui and Wangui Njuguna Gachui.

29. The Defendant produced a copy of the share certificate number 3018 which shows that J. Gachui/Francis Gachui held two shares in Embakasi Ranching. The Defendant also produced a document bearing a stamp of Embakasi Ranching Limited showing that plot number 117 is also known as 105/5639 and 118 became 105/5640. The document is endorsed with remarks "pay for site visit" dated 6/3/2007. It is also written "Come on 23/1/2007" and "come after 3 weeks". A copy of the receipt issued by the Gatuguta & Manek on 29/3/76 shows that KShs 550 had been received on account of E. Co. Ltd from J. Gachui/F. G. Kimani. Another receipt was issued on 15/11/77.

30. The Defendant produced a copy of the amended Registry Index Map for Nairobi Block 105 (Embakasi Ranching) and demonstrated that Plot numbers 5639 and 5640 are what was previously P117 and P118 respectively. On cross examination she stated that she leased out Plot No. P117 in 2012.

31. The onus of showing that Plot No. 105/22 is the same as of Plot No. RUA V10522 Jet View Estate which later became Nairobi Block 105/5640 rests fairly and squarely on the Plaintiff. That onus has not been discharged. The Defendant did not also provide evidence to show that Jack Kamau Wachira, from whom it purchased the suit plot was a member of Embakasi Ranching Limited. Ordinarily, a member of a land buying company would be issued with a share certificate to confirm his membership. Weighing the evidence of the Plaintiff against that of the Defendant, the court is inclined to find that the Defendant purchased the suit land which is Plot Nos. P117 and P118 from her grandmother and that these were subsequently registered as Nairobi Block 105/5639 and Nairobi Block 105/5639 respectively.

32. The court finds that the Plaintiff has failed to prove its case on a balance of probability. It is dismissed with costs to the Defendant. The court enters judgement for the Defendant as prayed in paragraphs (i), (ii) and (iii) of the Counterclaim.

**Dated and delivered at Nairobi this 26<sup>th</sup> day of February 2018.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Gakaria for the Plaintiff

Mr. Mukuria holding brief for Mr. Onyango for the Defendant

Mr V. Owuor- Court Assistant