



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 355 OF 2011

JOSEPH WATENE MAINA.....PLAINTIFF

VERSUS

MARIRU PARK LTD.....1ST DEFENDANT

ABDI MWENDA ABDUL RAUMAN.....2ND DEFENDANT

JUDGEMENT

1. The Plaintiff filed suit on 15/7/2011 seeking a declaration that the transfer of plot number 115(proposed new plot number 178) on L. R. No. 7659/8 Karasani, by the 1st Defendant to the 2nd Defendant is unlawful and void; and that the plot belongs to the Plaintiff. The Plaintiff seeks an order of eviction against the 2nd Defendant, or in the alternative, that the 1st Defendant do pay general damages to the Plaintiff.

2. The Plaintiff entered into a sale agreement with Lucy Waithera Kimani on 13/5/1996 for the purchase of Plot number 115 on L. R. No. 7659/8 Kasarani. Lucy Waithera Kimani was the original allottee of the plot from Mariru Park Limited, the 1st Defendant in this case. The agreed consideration was Kshs. 50,000/= which the Plaintiff duly paid. He also paid the transfer fees of Kshs. 2,000/ to the 1st Defendant on 1/7/1996.

3. The Plaintiff left the country for the United Kingdom in 2003 to study and returned in 2006. Upon his return, he found someone had trespassed on his plot and started constructing a house on it. He went to the offices of the 1st Defendant to inquire about the trespass but found the offices closed. He managed to contact a director of the 1st Defendant Company who unfortunately was ill and could not meet him. The Plaintiff left the country in January, 2009 to study in the USA and returned in December, 2010.

4. Upon his return to Kenya, he visited the survey offices and retrieved maps showing the subdivision of the plots which he produced in evidence. His attempts to get the 2nd Defendant to vacate the plot were futile prompting the Plaintiff to file this suit.

5. The Plaintiff testified in court and called Lucy Waithera Kimani as his witness. Lucy testified that she purchased the suit plot from Mariru Park Limited in 1990 and sold it to the Plaintiff on 13/5/1996. She confirmed that the plot belonged to the Plaintiff and that she had pointed out the suit plot to the Plaintiff when he purchased it from her.

6. The 1st Defendant filed a defence on 20/9/2011 denying the Plaintiff's claim while averring that the 2nd Defendant rightfully occupied the suit plot. The 1st Defendant maintains that the maps relied on by the

Plaintiff are not what was used to allocate the plots and that the Plaintiff should trace his plot elsewhere. The 1st Defendant did not attend court during the hearing of this case.

7. The court has looked at the witness statement of Isaac K. Mariga filed in court on 14/11/2011. He states that he could not trace the Plaintiff's name in the 1st Defendant's company records and was unable to find the name of the original allottee. He also states that the available records which he found when he took over management of the 1st Defendant are scanty since most of the directors who operated the company in 1990 are now dead and they never used to keep proper records. He averred that he was unable to find the name of Lucy Kimani or the Plaintiff in the 1st Defendant's records.

8. The court has looked at the documents produced by the Plaintiff which include the agreement for sale, the receipt issued by the 1st Defendant to Plaintiff on payment of transfer fees on 1/7/1996 and a complimentary slip on the 1st Defendant's notepaper requesting the Plaintiff to forward all receipts before collecting the certificates.

9. The Plaintiff also produced a copy of the receipt issued by the 1st Defendant to Lucy Kimani on 2/9/1990 on account of payment of the plot development fee together with the receipt issued to her when she paid the plot fees of Kshs 22,000/= on 2/9/1990. Plot number 115 registration number 257 is written at the top of those receipts. The Plaintiff also produced a copy of the plot certificate issued by the 1st Defendant bearing the number 239 for plot number 115 under registration number 257.

10. He also produced copies of his passport and residence permits which allowed him to remain in the UK in 2005 and 2006 as well as the visa allowing him to travel to the United States of America for further studies in the University of Northern Virginia.

11. The court has analysed the evidence adduced and finds that the Plaintiff has proved on a balance of probabilities that he is the owner of plot number 115 on L.R. No. 7659 Kasarani. He bought this plot from Lucy Waithera Kimani who was originally allocated the plot by Mariru Park Limited. The 1st Defendant ought not to have sold the suit plot to the 2nd Defendant after selling it to Lucy Waithera Kimani who later sold it to the Plaintiff. The 1st Defendant cannot ask the Plaintiff to trace his plot elsewhere as it was responsible for the subdivision of the plots and allocation to its members and other persons who purchased plots from it.

12. An order of eviction is issued against the 2nd Defendant. The Plaintiff is awarded the costs of this suit against both Defendants.

Dated and delivered at Nairobi this 20th day of February 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Asimwe holding brief for Mr. Maina for the Plaintiff

No appearance for the Defendant

Mr V. Owuor- Court Assistant