



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MILIMANI

E.L.C. CASE NO. 535 OF 2010

ISRAEL WERE WAKHO.....PLAINTIFF

VERSUS

JOSEPH R. KINGORI.....DEFENDANT

JUDGEMENT

1. The Plaintiff filed suit on 19/10/2010 seeking a declaration that he is the lawful and legal owner of Plot Number 350-Embakasi/Njiru Self Help Group in Komarock Project Phase III (“the Suit Property”). He also seeks a permanent injunction to restrain the Defendant from trespassing, constructing, wasting, purporting to sell, transferring or in any manner dealing with the Suit Property.
2. After the court rejected the service effected on 7/5/2014, the court directed on 8/12/2012 that summons to enter appearance should be taken out within 14 days. On 8/12/2014, the court ordered that service of the plaint and summons to enter appearance together with the notice of motion dated 18/10/2010 would be effected on the Defendant by way of an advertisement in the Daily Nation. The advertisement was placed in the *Daily Nation* of 22/1/2015. The Defendant did not enter appearance. The Plaintiff requested for judgement. The court entered interlocutory judgement for the Plaintiff on 7/3/2015 and directed that the suit be set down for hearing pursuant to Order 10 Rule 9 of the Civil Procedure Rules.
3. The firm of Ojienda & Company Advocates filed a Notice of Change of Advocates on 19/7/2016 indicating that they were taking over conduct of the matter from Seneti & Company Advocates. There is nothing on the court record filed by Seneti & Company Advocates. The firm of Ojienda & Company Advocates did not file any pleading or participate in the proceedings.
4. The matter proceeded for hearing on 8/2/2018. The Plaintiff gave evidence and adopted his witness statement filed in court on 9/1/2013. He filed **HCCC No. 698 of 2010** on 18/10/2010 which was later transferred to the Environment and Land Court and given the number **ELC Case No. 535 of 2010**.
5. The Plaintiff purchased the Suit Property on 7/4/2006 for Kshs. 300,000/= from Jantrix Atieno Maloba. He paid Kshs. 250,000/= at the time of execution of the agreement and paid the final instalment to Chrisanthus Ohenga Maloba on 12/9/2006. The sale agreement was witnessed by officials of Embakasi Self Help Group who took the ownership certificate number 1365 bearing the names of Jantrix Atieno Maloba and issued certificate number 1541 to the Plaintiff. The Plaintiff executed an addendum to the sale agreement on 12/9/2006 when he paid the final instalment.
6. In October 2000 when the Plaintiff came to Nairobi from his rural home in Busia, and went to check on his plot, he discovered that somebody had dug trenches on it with the intention of constructing thereon. Upon inquiry, he learnt that the Defendant was responsible for the construction and on consulting the officials of Embakasi/Njiru Self Help Group, they confirmed that according to their records he was still the owner of the Suit Property.
7. The officials of Embakasi/Njiru Self Help Group wrote to the Chief on 9/8/2010 clarifying that they had sold the Suit Property to the Plaintiff. The Plaintiff also reported the issue to the area Chief of Kayole who summoned the parties to his office and asked them to provide the necessary documents in support of their claim. The Chief directed the Defendant to stop construction.
8. The Plaintiff produced a copy of the certificate of death confirming that Kenneth Onyango Khadudu died on 5/11/2003 together with a copy of the gazette notice showing that Jantrix Atieno Maloba and John Maloba obtained grant of letters of administration to the Estate of Kenneth Onyango Khadudu. A copy of the grant issued on 28/6/2004 was also produced in evidence as well as the ownership certificate number 1365 issued on 20/3/2005 confirming that Jantrix Maloba was the owner of Plot number 350 in Embakasi/Njiru United Self Help Group. The copy of the receipt issued by Embakasi/Njiru United Self Help Group shows that Jantrix Atieno Maloba paid Kshs. 2500 on 20/3/2005 for surveying, planning and other fees.

9. The sale agreement dated 7/4/2006 states that Jantrix Atieno Maloba was the registered owner of the Suit Property and was desirous of selling the plot to the Plaintiff. The completion date is given as 4 months from the date of the agreement. The addendum agreement dated 12/9/2006 was also produced in evidence. The Plaintiff paid Kshs. 2500 to Embakasi/Njiru United Self Help Group on 5/6/2006 on account of surveying, planning and other costs. He also produced certificate number 1541 issued by Embakasi/Njiru United Group confirming that he was the owner of plot number 350 as well as the beacon certificate issued by the Self Help Group on 6/4/2006. The Chief summons dated 7/8/2010 was also produced in evidence.

10. The letter from Embakasi/Njiru United Self Help Group Komarack dated 9/8/2010 addressed to the Chief Kayole location confirmed that letters of administration were issued to the wife of the deceased on 28/6/2004. The letter mentions that the plot is being developed by unknown persons. What the court deduces from this is that the suit plot was previously owned by Kenneth Onyango Khadudu and upon his demise, his widow sold it to the Plaintiff.

11. The court has considered the Plaintiff's claim and finds that the Plaintiff has proved on a balance of probabilities that he is the owner of Plot number 350-Embakasi/Njiru Self Help Group in Komarock Project Phase III. The court allows prayers (a) (b) and (d) of the Plaintiff.

Dated and delivered at Nairobi on 12th April 2018.

K. BOR

JUDGE

Read in open court in the presence of: -

Mr. V. Owuor- Court Assistant

In the absence of both parties