



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 138 OF 2009

ZACHARY NGANGA MWAURA.....PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI.....1ST DEFENDANT

G.C.K. KATSOLLEH.....2ND DEFENDANT

ROSE MUTINDA.....3RD DEFENDANT

JUDGEMENT

1. The Plaintiff seeks to be declared the owner of Plot No. NS-09 Umoja I Corner shop and special damages in the sum of Kshs. 400,000.00 being the cost of excavation that he incurred when he commenced development of the suit plot before being stopped by the 1st Defendant's officers.
2. The Plaintiff claims he purchased Plot No. NS-9 Umoja Cornershop ("the Suit Property") from Michael Masinde in 2001. He claims that the 1st Defendant issued a beacon certificate to him and executed an assignment to him.
3. It was later discovered that the same plot had been allocated to someone else and the Plaintiff was allocated an alternative plot being Plot No. 50- Umoja II Zone 8 which he contends was much smaller and lower in value compared to the Suit Property.
4. The 2nd and 3rd Defendants denied the Plaintiff's claim in their defences. The 2nd Defendant denied that he was the 1st Defendant's Deputy Town Clerk in March 2009 as alleged by the Plaintiff.
5. The Plaintiff's case was heard by Mutungi J. in 2015. Proceedings were typed and this court heard the defence and submissions of the parties. The Plaintiff testified that he bought the suit land and started excavating the soil after obtaining approval for the architectural drawings for the development. His workmen were stopped from excavating and arrested by officers of the 1st Defendant. He claimed that he came to learn that the 2nd Defendant was behind his woes. He engaged the services of a valuer to value the property who prepared a report at the cost of Kshs. 30,000= and who was paid Kshs. 5000.00 to attend court to give evidence. He urged the court to order that he be given the Suit Property or its market value.
6. He produced a copy of the beacon certificate dated 19/4/2005 showing the location of the suit plot. He also produced a copy of the approved building plan which is illegible. He stated that the 2nd Defendant abused his position as Deputy Town Clerk and acted illegally in acquiring the Suit Property which belonged to him. He also produced a copy of the letter of allotment issued to Michael Masinde bearing an incomplete date as 18th January 199. The area of the plot is indicated as 0.03 ha.
7. Michael Masinde gave the Plaintiff a power of attorney over the suit plot dated 6/4/2001. He also produced a copy of the letter allocating him Plot No. 50 Umoja II Zone 8. The assignment over the suit plot which the Plaintiff produced is dated 8/5/2007 confirming that he had assigned the plot to the Plaintiff for the consideration of Kshs. 400,000.00. The Plaintiff executed the assignment as assignee.
8. He also produced a handwritten acknowledgement dated 19/2/2009 by James Wahome Muchiri showing that he had been paid Kshs. 350,000.00 by the Plaintiff for work done on the suit plot. The nature of the work done is not stated.
9. The Plaintiff's valuer testified that as at 2012 the value of the suit property stood at Kshs. 4 Million. He stated that restoring the plot to its original position would cost about Kshs. 1.2 Million.
10. The 1st Defendant's Assistant Director, Site and Service Schemes in Nairobi gave evidence for the 1st Defendant. He produced the part development plan for the area where the suit land is situated. He stated that plot no. NS09 which the Plaintiff claims is different from plot no.

CS59.

11. The 2nd and 3rd Defendants testified. They denied ever owning the Suit Property. The 2nd Defendant confirmed that he worked as the 1st Defendant's Deputy Town Clerk.

12. The issue for determination is whether the court ought to issue the reliefs sought by the Plaintiff. The Plaintiff did not prove which plot he was allocated by the 1st Defendant. He did not prove from which plot he excavated soil before being stopped by the 1st Defendant's officers. It was also not clear whether the Plaintiff accepted allocation of plot no. Plot No. 50 Umoja II Zone 8 which he claimed was smaller and of less value than the suit plot. He did not lead evidence on the value of this second plot. He did not prove that the suit plot was allocated to the 2nd and 3rd Defendants.

13. The Plaintiff has failed to prove his case on a balance of probabilities. It is dismissed with costs to the Defendants.

Dated and delivered at Nairobi this 30th day of August 2018.

K. BOR

JUDGE

In the presence of: -

Ms. Athman holding brief for Mr. Kinga for the Plaintiff

Mr. Nyakoe for the 1st Defendant

Mr. Kaingu for the 2nd and 3rd Defendants

Mr. V. Owuor- Court Assistant