



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 412 OF 2010

ANDREW GATU GICHIA.....PLAINTIFF

VERSUS

MANDUGU HOLDINGS CO. LIMITED.....1ST DEFENDANT

DIANA MUTHONI.....2ND DEFENDANT

KIAMBU DANDORA FARMERS CO. LIMITED.....3RD DEFENDANT

STEPHEN MUTHII MURIITHI.....4TH DEFENDANT

CONSOLIDATED BANK OF KENYA LIMITED.....5TH DEFENDANT

REGISTRAR OF LANDS.....6TH DEFENDANT

JUDGEMENT

1. The Plaintiff owns the land known Nairobi Block 107/1121 and was issued a certificate of lease over this parcel of land on 5/10/2006. He claims that after purchasing this parcel of land he fenced it with a chain link fence. The fence was pulled down by officers of the Nairobi City Council on or about 5/10/2007. He claims that the 4th Defendant unlawfully trespassed onto his land sometime in 2010 and proceeded to erect a fence around it.
2. The 4th Defendant is the registered proprietor of Nairobi/Umoja/Block 107/1/1121 which he claims he bought from M/S Praise Place Limited. He charged this property to the 5th Defendant in his capacity as trustee of Redeemed Gospel Church on 11/11/2011 and a further charge was registered against the land on 20/6/2013.
3. The 5th Defendant advanced a loan to the trustees of Redeemed Gospel Church which was secured by the 4th Defendant's property known as Nairobi Block 107/1/1121. Parties gave evidence and produced documents in support of their cases.
4. The main issue for determination is whether Nairobi Block 107/1121 is the same as Nairobi Block 107/1/1121. It is not in dispute that the Plaintiff owns the former plot while the 4th Defendant owns the latter plot which he charged to the 5th Defendant.
5. The copy of the official search produced by the Plaintiff shows that the registration section is Nairobi Block 107 while the parcel number is 1121. On the proprietors section, it is shown that Stephen Muthii Mureithi was issued a certificate of lease on 21/4/2010. A restriction prohibiting dealings with the land was registered on 15/12/2011 stating that no dealings until owners clear with the City Council of Nairobi. On the encumbrances section, the search shows that a charge to Consolidated Bank Kenya Limited for Kshs. 4.5 million was registered on 29/11/2011. A further charge to the same bank was registered against this land for Kshs. 2.75 million on 5/7/2013. The rights under Sections 82 and 83 are reserved.
6. The letter dated 3/11/2017 from the Director of Surveys office, Ministry of Land and Physical Planning, Survey of Kenya states that surveyors visited the physical location of Nairobi Block 107/1121 in Umoja to survey the property on 31/10/2017. They confirmed that the physical measurements were accurate in accordance with F/R No. 251/87. The surveyors identified the beacons on the ground which they confirmed were in stable condition. The letter states that Nairobi Block 107/1121 was surveyed on 7/9/1994 and is to be found in the Registry Index Map (RIM) for Nairobi Block 107 (Umoja 2) sheet 2. The letter stated that Nairobi Block 107/1/1121 did not exist in the survey records.
7. The evidence of the surveyor and the Land Registrar is crucial in determining this dispute. Pricillah Wango, a land Surveyor with the Director of Surveys, Ministry of Lands and Physical Planning stated that Nairobi Block 107/1/1121 did not exist in their records. Edwin

Wafula, a Land Registrar based in Nairobi also gave evidence. According to their records, Nairobi Block 107/1121 is owned by Stephen Muthui Mureithi, the 4th Defendant in this case. The records in relation to Nairobi Block 107/1/1121 could not be traced nor could they be found in their system. He stated that the conveyance documents were done by the defunct Nairobi City Council. In his opinion, this was a case of double allocation where two different numbers are assigned to the same piece of land.

8. The 5th Defendant's witness, Pamela Mutenyo Lumbasi gave evidence. She confirmed that the loan advanced by the 5th Defendant to the 4th Defendant was secured by a charge and further charge over the 4th Defendant's property known as Nairobi Block 107/1/1121. She produced a copy of certificate of lease issued to the 4th Defendant on 21/4/2010. The lease shows that the lessee was Praise Place Limited and the lessor was Nairobi City Council. The charge and further charge are noted on the encumbrances section of the title. The 1st charge registered against this parcel of land was in favour of Equity Bank Limited to secure payment of Kshs. 2 million on 21/4/2010. This was discharged in November 2011 when the charge in favour of Consolidated Bank Limited was registered.

9. Section 18 of the Registered Land Act which has since been repealed but under which the suit land was registered enjoined the Director of Surveys to prepare and maintain maps for every registration district. On the registry map, every registration district is divided into registration sections to be identified by distinctive names. The registration sections may further be divided into blocks given distinctive numbers or letters or a combination of both.

10. Under Section 18(4) of this Act, the parcels in each registration section are to be numbered consecutively, and the name of the registration section and the number and letter of the block, if any, together with the number of the parcel are sufficient reference to any parcel.

11. The amended RIM for Nairobi Block 107 (Umoja 2) which the Plaintiff produced has parcel number 1121 and not parcel number 1/1121. In this case, Nairobi Block 107 is the registration section and block while 1121 is the number of the parcel. It follows therefore that Nairobi Block 107/1/1121 which the 4th Defendant claims to own does not comply with Section 18 of the Act since the numbering of parcels is supposed to be done consecutively and would not become 1/1121. In any event the witnesses from the lands office and survey department confirmed that Nairobi Block 107/1/1121 does not exist and only Nairobi Block 107/1121 which belongs to the Plaintiff exists.

12. The court finds that the Plaintiff has proved his case on a balance of probabilities and grants prayers (a), (aa), (bb) of the Re-amended Plaint dated 21/10/2015. The Plaintiff is awarded general damages for trespass in the sum of Kshs. 1 million. The Plaintiff will have the costs of the suit to be borne by the 4th Defendant.

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

K. BOR

JUDGE

In the presence of: -

Mr. J.N. Maina for the Plaintiff

Mr. Kamau holding brief for Mr. Eredi for the 6th Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 1st, 2nd, 3rd, 4th and 5th Defendants