



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**E.L.C. CASE NO. 819 OF 2015**

**CHARLES M. RINGERA.....PLAINTIFF**

**-VERSUS-**

**MSHAMBA HOUSING COOPERATIVE SOCIETY.....1<sup>ST</sup> DEFENDANT**

**NAIROBI CITY COUNTY.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

1. The Plaintiff was a member of the 1<sup>st</sup> Defendant and entered into a sale agreement in 2004 for the purchase of plot number 090 on L.R. No. 9363/102 in Ruai, Nairobi County. He was issued with a letter of allotment in 2006 and claims he took possession. He claims the 1<sup>st</sup> Defendant has failed to process his title. He seeks an order compelling the 1<sup>st</sup> Defendant to compensate him for the value of plot number 090 on L.R. No. 9363/102 at Ruai, Nairobi County. He also seeks general damages and costs of the suit in the Amended Plaint dated 30/9/2015.
2. The Defendant denied the Plaintiff's claim and averred that it engaged surveyors to undertake the process of subdivision of L.R. No. 9363/102. The 2<sup>nd</sup> Defendant gave conditions to be made before it could facilitate the process of subdivision of the 1<sup>st</sup> Defendant's land. Some of the plots in the subdivision proposed by the 1<sup>st</sup> Defendant fell within the riparian reserve and other public utility requirements. This ended up affecting the number of plots that could be created from the subdivision which could be allocated to the 1<sup>st</sup> Defendant's members.
3. The 1<sup>st</sup> Defendant resolved to purchase an alternative piece of land to compensate its members who were affected and lost their plots during the subdivision including the Plaintiff. The Plaintiff was subsequently allocated plot number 49 through ballot number 218 on L.R. No. 1/43 Donyo Sabuk, and the Plaintiff signed against the allocation. The 1<sup>st</sup> Defendant resolved at a meeting attended by its shareholders including the Plaintiff to sell some of its plots in order to pay its debts.
4. The 2<sup>nd</sup> Defendant filed its defence in June 2017 and denied the Plaintiff's claim or that the Plaintiff was entitled to the orders he sought.
5. The Plaintiff gave evidence. He claimed that he took possession of plot number 90 upon payment of the purchase price and being issued with a letter of allotment dated 9/9/2006. He claimed that the 1<sup>st</sup> Defendant failed to process his title. He produced his advocate's letter dated 11/8/2015 challenging the 1<sup>st</sup> Defendant's decision to unilaterally move him from plot number 090 in Ruai Phase I along the Eastern By-pass to a plot in Ndonyo Sabuk. The letter demanded the issuance of a title deed for plot number 090 along the Eastern By-pass.
6. The 1<sup>st</sup> Defendant's advocate responded on 17/7/2015 and clarified that the Plaintiff was allocated a plot on L.R. No. 1/43/Donyo Sabuk on 23/3/2013 following the balloting in which he participated and signed ballot number 255 and was issued an allotment letter for the new plot. The letter clarified that the decision was taken in consultation with the members whose plots on L.R. Nos. 9363/102 were affected when the Eastern By-pass was constructed and some of the plots fell on public utilities.
7. The Plaintiff produced a copy of the agreement and the allocation of plot number 090. He also produced the chairman's report of the meeting held on 25/7/2015 which mentioned an existing loan owed by the 1<sup>st</sup> Defendant. He also produced a copy of the 1<sup>st</sup> Defendants estimate for buying plots measuring 40 by 80 ft which amounted to Kshs. 47,000/= The Plaintiff produced a schedule showing the land parcels on 9363/102 which were taken up by public utility or riparian reserve. The Plaintiff's name is included against membership number 2917 for plot number 90 which is indicated to be for public utility. He produced a copy of the valuation report which gave the value of the plot he was initially allocated as being Kshs. 1.6 million while the plot in Donyo Sabuk was worth Kshs. 200,000/=.
8. The issue for determination is whether the court should grant the orders sought by the Plaintiff. The Plaintiff does not wish to take up the plot in Donyo Sabuk. He confirmed that he had not developed the suit plot. The Plaintiff seeks an order to compel the 1<sup>st</sup> Defendant to

compensate him for the value of plot number 090 on L.R. No. 9363/102, Ruai, Nairobi.

9. The court has considered the pleadings, the evidence and the submissions of all the parties. The Plaintiff failed to prove that he had any claim against the 2<sup>nd</sup> Defendant.

10. The 1<sup>st</sup> Defendant argues that the Plaintiff participated at the meeting where the resolution to have some members whose land along the Eastern Bypass was taken up by roads, riparian reserves or public utility allocated land compensated from the new parcel that the Society was to buy. The Plaintiff did not lead evidence to show that plot number 090 which was initially allocated to him after he paid Kshs. 47,000/= to the 1<sup>st</sup> Defendant was allocated to someone else, neither did he challenge the averment that this plot was taken up by public utility. The court notes that it was not only the Plaintiff's plot that became unavailable after the resurvey was done.

11. The Plaintiff has failed to prove his case on a balance of probabilities. It is dismissed with no orders as to costs.

Dated and delivered at Nairobi this 6<sup>th</sup> day of December 2018.

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Mureithi holding brief for Mr. Manyara for the Plaintiff

Mr. Mukeli holding brief for Mr. Kabaiku for the 1<sup>st</sup> Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 2<sup>nd</sup> Defendant