



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC NO. 674 OF 2013**

**JOSEPH GITHORO BORO..... PLAINTIFF**

**VERSES**

**EMBAKASI RANCHING COMPANY LIMITED..... DEFENDANT**

**JUDGMENT**

The Plaintiff brought this suit on 5<sup>th</sup> June, 2013 seeking a declaration that Plot No. F 168 Block 105/1290, share certificate No. 4059 (hereinafter “the suit property”) belongs to him, an order compelling the Defendant to execute and sign a transfer of lease in respect of the suit property in his favour and a permanent injunction restraining the Defendant from allocating the suit property or transferring the same to third parties and/or from interfering with his occupation thereof. In the plaint, the Plaintiff averred that the Defendant allocated to him the suit property on 28<sup>th</sup> November 1992. He paid all the requisite charges and was shown the boundaries of the property by the Defendant’s surveyor. He averred after fulfilling all the conditions of the allotment, the Defendant refused without assigning any valid reason to transfer the property to him. The Plaintiff averred that the Defendant proceeded without any right or authority of the Plaintiff to allocate the suit property to a third party who had deposited building materials thereon. The Plaintiff averred that despite demand having been made upon the Defendant to transfer the suit property to him and to order the third party to remove his building materials from the suit property, the Plaintiff had refused to do so. The Plaintiff averred that the conduct of the Plaintiff aforesaid was unlawful.

The Defendant was served with Summons to Enter Appearance. The Defendant entered appearance through the firm of Ngata Kamau & Co. Advocates on 26<sup>th</sup> June, 2013. The Defendant did not however file a statement of defence. The suit came up for hearing on 9<sup>th</sup> June, 2016 when the Plaintiff gave evidence and called one witness. In his evidence, the Plaintiff reiterated the contents of this plaint which I have highlighted herein above. The Plaintiff’s witness, Cyrus Kangethe Githoro who is the Plaintiff’s son corroborated the Plaintiff’s evidence. The Defendant’s advocates did not attend court to cross-examine the Plaintiff and his witness even after being served with a hearing notice.

I have considered the Plaintiff’s claim against the Defendant as pleaded. I have also considered the evidence which was adduced by the Plaintiff and his witness in proof of his case. From the material before me, it is not disputed that the Plaintiff was a shareholder of the Defendant under share certificate No. 4059. It is also not disputed that the Defendant allocated to the Plaintiff Plot No. F168 (“the suit property”) on 28<sup>th</sup> November, 1982. It is also not disputed that the Plaintiff paid all the requisite charges and fees that was required by the Defendant to enable it process a title in favour of the Plaintiff in respect of the suit property. There is no dispute that the Plaintiff took possession of the suit property and has developed the same with the permission of the Defendant. It is also not disputed that the Defendant has failed to fulfill its part of the agreement evidenced by the letter of allocation dated 28<sup>th</sup> November 1982.

The Defendant did not file a defence. There is therefore no explanation tendered by the Defendant as to why it has failed to transfer the suit property to the Plaintiff. PW 2 stated that an instrument of transfer of lease in respect of the suit property in favour of the Plaintiff had in fact been prepared by the Defendant and forwarded to the Plaintiff for execution. The Plaintiff signed his part and forwarded the same back to the Defendant for execution and further action. The Defendant claimed that the said instrument of transfer got lost in its offices. Although the said transfer got lost in its offices, the Defendant refused to prepare another instrument of transfer even after the Plaintiff paid Kshs.15,000/= for the same. In the

absence of any explanation from the Defendant as to why it has failed to transfer the suit property to the Plaintiff the only conclusion the court can make on the evidence before it is that the Defendant's action is unjustified and as such a breach of the agreement it entered into with the Plaintiff.

I am satisfied on the material before me that the Plaintiff has proved his case against the Defendant on a balance of probabilities. I therefore enter judgment for the Plaintiff against the Defendant for;

- (i) A declaration that the Plaintiff is the legal owner of Plot No. F 168 Block 105/1290.
- (ii) An order that the Defendant does execute a transfer of lease in respect of Plot No. 168 Block 105/1290 in favour of the Plaintiff.
- (iii) A permanent injunction restraining the Defendant by itself, its agents, servants or employees from allocating or transferring Plot No. F. 168 Block 105/1290 to third parties and/or interfering with the Plaintiff's peaceful occupation of the said parcel of land.
- (iv) The costs of the suit to be paid by the Defendant.

**Delivered and signed at Nairobi this 31<sup>st</sup> day of March, 2017**

**S. OKONG'O**

**JUDGE**

**In the presence of**

Ms. Mambiri	for the Plaintiff
N/A	for the Defendant
Kajuju	Court Assistant