



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MILIMANI

ELC SUIT NO. 640 OF 2013

SOSPETER KAMBOGO MWANGI 1ST PLAINTIFF

JOHN NDUNG'U KAMBOGO2ND PLAINTIFF

VERSUS

EMBAKASI RANCHING COMPANY LTD RESPONDENT

JUDGMENT

1. The two Plaintiff in this suit commenced this suit against the Defendant, a Land Buying Company by way of a plaint dated **29/5/2013**.
2. They claimed that between the years **1975** and **1982**, they purchased shares in the Defendant Company. They state that they were issued with Share Certificates for those shares, and that by virtue of the purchase and ownership of those shares, they became entitled to portions of the defendant's land in that parcel of land known as **L.R. NO.10904/2** measuring 2024 Ha. The plaintiff state that upon payment of the Surveyors fee, they were issued with a provisional Letters of Allocation of the plots Nos.**C421, C422** and **C431**.
3. Plot No.C421 and C422 were later numbered plot **Nos.C2533** and **C2534** respectively while plot No.**C431** was renamed **C2520**.
4. After paying the Surveyors fees, the plaintiffs were shown the plots and their beacons in or about the year **1990**. They then took possession of the plots which they retained till the filing of this suit. Bonus plots were also issued to the plaintiffs on the basis of their Shareholding in the company.
7. In the plaint, the plaintiffs have averred that on several occasion attempts were made to dispose them of plots: in **1997**, an unnamed man attempted to lay claim to the 2nd plaintiff's **Plot No.C2533** but the defendant company ruled that the said plot belonged to the 2nd plaintiff. Again in the year **2011**, officers of the defendant attempted to lay claim to the 2nd plaintiff **Plot No.C2533** but they desisted from doing so upon being threatened with legal action by the plaintiffs' lawyer. In the year **2013**, one Mwangi purported to be the lawful allottee of the 2nd plaintiff's **Plot No.C2533**. On this last occasion the Board of the Defendant Company determined that neither the said Mwangi nor the 2nd plaintiff were the lawful allottees of **Plot No.C2533**. They said the plot belonged to the defendant company. The Board also added that **Plot No.C2520** and **C2534** belonged to the company.
6. The plaintiffs' prayers are for a declaration that the 1st plaintiff is the lawful allottee of the **Plot No.C2533** and **C2534** and that the 2nd plaintiff is the lawful allottee of **Plot No.C2520**, a perpetual injunction is also sought against the defendant to restrain it from allocating, disposing alienating, occupying, taking possession of or entering or in any other way interfering with the plaintiffs' ownership

and possession of the subject land.

7. An Affidavit of Service was filed by one Erastus Kisomo, Court Process Server on **4th March 2015**. It shows that the defendant was served. A request for Judgment was filed on **4/3/2015**. M/s Ngata Kamau & Co. Advocates filed a Notice of Appointment of Advocates on **25/7/2013** on behalf of the defendant. The Defendant thereafter failed to file any defence. Service of a Hearing Notice was effected upon the firm of M/s Ngata Kamau & Co. Advocates on **20/2/2017**. However, there was no representation in court on behalf of the defendant at the hearing. Neither were the defendant's witnesses present. The matter proceeded to formal proof on **28/3/2017**. Two witnesses testified for the plaintiff's and the case was closed. The plaintiff's submission were filed on **21/4/2017**.

8. The 1st plaintiff gave evidence on his own behalf and on behalf of the second plaintiff who is his son. He had a Letter of Authority to appear, act and plead dated **29/5/2011** signed by the 2nd plaintiff. It was produced as **"P. Exhibit 14"**. The 1st plaintiff testified that the original Share Certificate had been lost. He had reported the loss to the Police who issued him with a Police Abstract showing that they got lost. The Police Abstract was produced as **"P.Exh11"**.

9. This suit is not opposed. There was therefore no contest regarding the validity of the documents produced in court. In any event the 1st plaintiff laid a proper ground for the production of copies of the Share Certificate **No.060, No.1369**, and the Provisional Letters of Allocation of plots attached to those Copies of Share Certificate. He produced a police abstract to prove the loss. There was a good ground laid prior to the production of these documents and I allowed their production.

10. The 1st plaintiff produced receipts for money paid either to the defendant company or its advocates. A Beacon Certificate issued by the defendant was produced as proof that the 1st plaintiff had been shown the beacons and location of his plots.

11. The provisional Letters of Allocation produced in respect of **Share Certificate No.060** and **Share Certificate No.1369**, which are in the name of the 1st plaintiff and the 2nd plaintiff respectively are in the names of the two plaintiffs respectively. They are signed by one Godfrey Muhuri Muchiri, Chairman of the Board of the Defendant Company.

12. In the final analysis, this court finds that the two plaintiffs have proved on a balance of probabilities that their claim is valid. I therefore grant the plaintiffs prayers **Nos. (a), (b) and (c)** as prayed in the plaint.

13. Finally, it is regretted that due to the involvement of the Court in the Service Week at Nairobi in May, 2017 and in Meru in June, 2017, and the two subsequent Judges' Retreats held after the hearing of the case, the judgment could not be delivered on time on 25/5/2017 as scheduled.

Signed at Kitale on this 11th day of July, 2017

MWANGI NJOROGE

JUDGE

Dated, signed and delivered at Nairobi on this 19th day of July, 2017

K. BOR

JUDGE

Judgement read in open court in the presence of:

Maina for the Plaintiffs

Kamau for 2nd Defendant

Court Assistant: V. Owuor.

K. BOR

JUDGE