



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 983 OF 2012**

**PETER NJOROGE KIGONDU.....1ST PLAINTIFF**

**JOSHUA K. GACHERU.....2ND PLAINTIFF**

**JOSEPH N. NZIOKA.....3RD PLAINTIFF**

**VERSUS**

**CITY COUNCIL OF NAIROBI.....DEFENDANT**

**JUDGEMENT**

1. In the plaint filed in court on 11/12/2012 the Plaintiffs prayed for an injunction to restrain the Defendant from re-alloting plot numbers 39, 44, 48, 446 and 450 in the Kariobangi South/KCC Village Formalization Project (“the Suit Properties”) and an order to compel the Defendant to show the Plaintiffs the physical locations of these plots. The Plaintiffs also seek an order compelling the Defendant to rectify all boundaries for the Plaintiffs’ Suit Properties and costs of this suit.

2. At the time of filing suit, the Plaintiffs filed an application seeking a temporary injunction which the court on 6/3/2014 pending the hearing and determination of the suit.

3. The Plaintiffs’ case is that they were allotted the Suit Properties by the Defendant and that they duly paid the stand premium.

4. The 1st Plaintiff was allotted plot number 450 vide a letter of allotment dated 7/1/2002. He paid all the dues required of him by the Defendant but he claims not to have been shown his plot and not issued a beacons certificate.

5. The 2nd Plaintiff was allotted plot number 44 on 7/1/2002. He paid all the dues required by the Defendant including stand premium and ground rent.

6. The 3rd Plaintiff was allotted plot number 39 by the Defendant on 1/7/2002. He also purchased plot number 38 from one Justus Nyagah and claims to have registered the change of ownership with the Defendant’s legal department and continues paying the land rates for this plot. He also bought plot number 446 from Peter Njoroge Ndung’u and registered the change of ownership with the Defendant.

7. The Plaintiffs claim that they have pursued the Defendant seeking to be shown the exact location of their plots and the beacons but the Defendants officers particularly those in the survey department have refused to point out the Suit Properties to the Plaintiffs.

8. The 3rd Plaintiff claims to have been shown the beacons in respect of the plots he purchased that is 48

and 446 and has been issued with the beacon certificates and that the measurements on the documents do not tally with the beacons on the grounds. The Plaintiff's plea to the Defendant to correct the position to enable the Plaintiffs develop their plots have not borne any fruits.

9. The Defendant filed its defence denying the contents of the plaint. The Defendant claims that the Plaintiffs could not have blindly bought plots which they had not viewed and that they ought to have done due diligence to establish the location of the plots if indeed the allotments existed. The Defendant puts the Plaintiffs to task to produce the necessary documents to show that the allotment was done successfully. The Defendant also contends that an order of injunction cannot be issued in respect of pieces of land whose physical location the Plaintiffs do not know.

10. The matter was heard by Justice Onguto on 9/2/2015 and 10/3/2015. Parties agreed that the proceedings would be typed and that they would file submissions then this court will deliver the judgement.

11. The three witnesses gave evidence at the trial and produced the documents in support of their claim. These included the letters of allotment, the receipts showing the payments made on 14/10/2002 and 11/9/2006. They also produced copies of the Defendant's demands for the payment of ground rent. The payments were made as reflected at the bottom of the demand notes.

12. The Defendant did not call any witnesses.

13. The Plaintiff urges the court to treat the case as an undefended cause and grant the Plaintiffs the orders they seek in the plaint.

14. The court finds that the Plaintiffs have proved their case on a balance of probabilities since their evidence is uncontroverted. The Defendant had a duty to point out the exact location of the plots to the Plaintiffs after they complied with the conditions of the allotment of the Suit Properties. The fact that the Defendant continues to collect ground rent from the Plaintiffs shows that it allotted the plots and ought to have shown the Plaintiffs the exact location of the suit properties.

15. The court grants prayers (a), (b) and (c). The Plaintiffs will also have the costs of this suit.

**Dated and delivered at Nairobi this 19th day of September 2017.**

**K. BOR**

**JUDGE**

In the presence of: -

No appearance for the Plaintiffs and Defendant

Mr. V. Owuor- Court Assistant