



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. ELC 96 OF 2010**

**MAJOR KAHUGU KAREBE.....PLAINTIFF**

**VERSUS**

**COUNCILLOR ROSE ADHIAMBO OGONDA.....DEFENDANT**

**JUDGEMENT**

1. The Plaintiff seeks a declaration that he is the lawful owner of L.R. No. 209/10910 (“the Suit Property”) and a permanent injunction to restrain the Defendant from occupying or trespassing on the Suit Property. He also seeks an order for the eviction of the Defendant from the Suit Property and that the OCS Embakasi Police Station supervises the eviction.

2. The Defendant filed a Defence and Counterclaim on 1/7/2010 in which she urges the court to dismiss the Plaintiff’s suit and declare that the allocation of the Suit Property to the Plaintiff was irregular and unlawful; and that she was entitled to be given a chance to bid for the Suit Property. She also prays a permanent injunction to restrain the Plaintiff from evicting her from the Suit Property or interfering with the land.

3. The Defendant contends that the provisions of the Land Act were not followed when the Suit Property was allocated to the Plaintiff. She maintains that the Plaintiff failed to accept the offer for the allocation of the Suit Property within 30 days besides failing to pay the stand premium and develop the Suit Property within the prescribed period.

4. Both the Plaintiff and the Defendant testified at the hearing of this suit. The Plaintiff who is a retired military officer adopted his witness statement dated 3/5/2017. He produced copy of the Kenya *Gazette* Notice dated 31/10/1986 inviting applications for the allocation of plots in Nairobi City. He also produced a letter of allotment for plot No. UNS.BCR Plot No. 1- Villa Franca Nairobi. The Plaintiff accepted the offer of the plot through his letter of 18/2/1988. He paid for the plot on 1/12/1986 and made a further payment on 12/5/1992.

5. The Plaintiff was issued with the title over the Suit Property on 12/9/2006. He wrote a demand letter to the Defendant on 12/9/2005 urging her to remove the illegal *mabati* structures she had erected on the Suit Property. His advocate also wrote to the Defendant on 12/2/2010 asking her to demolish her structures and move out of the Suit Property. The Plaintiff also produced a rates demand note for the Suit Property showing that he had paid rates for Kshs. 10,370 on 26/2/2008.

6. The Defendant adopted her witness statement dated 5/2/2015 and produced photographs showing the structure she had erected on the Suit Property. She stated that she was given the Suit Property in 1981 by a Chief called Mr. Ikiigu who was the Chief of the area where the Suit Property is situated until he was transferred. She stated that she was not given any document when she was given the plot. She stated that

back then in the area commonly referred to as Mukuru kwa Njenga, it was the Chief who used to allocate land. She confirmed that she never went to the lands office to confirm the owner of the Suit Property. At the time she was sued she was a councillor with the Nairobi City Council. She confirmed that she did not obtain the approval of the City Council to build the structures which she erected on the Suit Property. She stated that she did not know how the Plaintiff got the plot and she was not aware under what law the chief gave her the plot in 1981. She stated that she had lived on the plot from 1981 to date.

7. The Defendant called a second witness who confirmed that she found the Defendant living on the Suit Property when she moved there in 1993. She stated that the plots used to be given to individuals by a Chief called Mr. Ikiigu when the chairlady called Josephine Kavindu Motomoto took them to the chief. She stated that their names were taken to the chief for allocation of the plots in 2001. They were not given any documents and that the plots do not have numbers. She stated that parcels were being curved out for the allottees. She stated that the Defendant has built *mabati* houses on the Suit Property where she lives and that she has rented out some of the other 10 rooms.

8. The issues for determination are:

- i. Was the Suit Property lawfully allocated to the Plaintiff?
- ii. Is the Defendant a trespasser on the Suit Property?
- iii. Is the Plaintiff entitled to an order of eviction against the Defendant?
- iv. Who should pay the costs of this suit?

9. The Plaintiff produced in evidence the *Gazette* Notice which invited members of public to apply for the plots in Villa Franca. He also produced in evidence the letter of allotment which was issued to him together with his letter accepting the offer. He stated that he made the requisite payments and that he was issued with a title for the Suit Property. He admitted that the Defendant is in possession of the Suit Property and claims to own it. He had asked the Defendant to demolish the structures she had erected and move out but the Defendant failed to do this.

10. It is not in dispute that the Defendant occupies a portion of the Suit Property on which she has erected some structures. The photographs produced in court confirm this. The other portion of the land behind the Defendant's house is vacant and is used as a dumping site for garbage. The Defendant stated that the area chief allocated them plots in 2001 but did not produce any documents to support her claim. Her contention that the law was not complied with when the Suit Property was allocated to the Plaintiff was not proved.

11. The Government Lands Act, now repealed, set out the procedure for allocation of public land. Under Section 12, leases of town plots were to be sold by public auction at a place and time to be notified in the *Gazette* pursuant to Section 13 of this Act. The Plaintiff produced the *gazette* notice which confirms that the procedure was followed. Sections 15, 16 and 17 set out the procedure to be followed if the highest bidder failed to pay the purchase price for the plot. The proviso at Section 16(1) allows the balance of the purchase price to be paid when the lease had been prepared. The Plaintiff paid for the plot on 1/12/1986 and made a further payment on 12/5/1992.

12. The Defendant has not proved that the allocation of the Suit Property to the Plaintiff was irregular or unlawful. Her counterclaim is dismissed with costs to the Plaintiff.

13. The court finds that the Plaintiff has proved that he is the lawful owner of the Suit Property and is entitled to the reliefs he seeks in the amended plaint filed in court on 16/6/2016.

Dated and delivered at Nairobi this 18<sup>th</sup> day of September 2017.

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Muriungi holding brief for Kimani for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant