



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**ELC. CASE NO. 479 OF 2008**

**PACKSON KARIUKI NDUNGU.....PLAINTIFF**

**VERSUS**

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

**JUDGMENT**

This suit was commenced by way of a Plaint dated 10<sup>th</sup> September 2008 and filed on 3<sup>rd</sup> October 2008 in which the Plaintiff, Packson Kariuki Ndungu, sought for judgment to be entered against the Defendant as follows:

- a. An order of specific performance directing the Defendant to identify on the ground to the Plaintiff the beacons for Plot No. 39 Komarock South (hereinafter referred to as the "suit property") which it allotted him, issue him with a beacon certificate and grant him possession thereto.
- b. In the alternative, the Defendant do refund the Plaintiff all the money he paid to it in the form of stand premium, annual rent, survey fees or any other payment in reference to letter of allotment dated 27<sup>th</sup> February 1992 and general damages for non-performance of the contract.
- c. Costs of this suit.
- d. Interest on (b) above at bank rates.

In the Plaint, the Plaintiff stated that on 27<sup>th</sup> February 1992, the Defendant allotted to the Plaintiff the suit property. He stated further that he paid Kshs. 8,640/- being stand premium, annual ground rent, survey fees and architectural fee and has continued to pay the same to date. He then stated that the Defendant failed to perform its part of the contract by failing to identify the beacons on the suit property or let him take possession thereto. He also stated that the Defendant failed to issue him with beacon certificate. He disclosed that he had also filed **CMCC No. 1891 of 2001 Milimani Nairobi and HCCC No. 1274 of 2002** which was dismissed for want of prosecution but stated that this suit had a different cause of action.

The Defendant filed a Defence dated 22<sup>nd</sup> December 2008 and filed on 21<sup>st</sup> January 2009 in which it denied the contents of the Plaint.

The hearing proceeded on 3<sup>rd</sup> March 2016 when the Plaintiff, the only witness, testified. The Defendant,

though having been served, did not attend the hearing. It was the Plaintiff's testimony that upon receiving the Letter of Allotment dated 27<sup>th</sup> February 1992 from the Defendant in respect of the suit property, he wrote an acceptance letter dated 12<sup>th</sup> March 1992 and paid Kshs. 8,640/- to the Defendant. He produced a receipt dated 11<sup>th</sup> March 1992 from the Defendant as proof. He further testified that he paid an additional Kshs. 13,160/- to the Defendant being survey fees and a further Kshs. 1,440/- being rent. He stated that he paid a total of Kshs. 5,760/- being annual rent for the period 1993 to 1996. He stated that in the year 1997, he went to the suit property and found other people in occupation. He informed the court that those in occupation of the suit property chased him away saying his plot was not there. He testified that he informed the Defendant of this situation but they did nothing, hence his filing this suit. He informed the court that he does not know the people in occupation of the suit property.

### **Determination**

Firstly, the Plaintiff disclosed to the court that he had also filed **CMCC No. 1891 of 2001 Milimani Nairobi and HCCC No. 1274 of 2002** which was dismissed for want of prosecution but stated that this suit had a different cause of action. The Plaintiff did not produce the pleadings for those two suits to enable the court ascertain whether the cause of action in the two suits are not the same as in the instant suit.

Secondly, the Plaintiff seeks for an order of specific performance directed at the Defendant to identify to him the beacons of the suit property and also to issue him with a beacon certificate. This points to the fact that the Plaintiff is himself not sure the exact location of the suit property which he claims has been invaded and taken possession of by persons he does not know. It is noteworthy that the Plaintiff did not sue those in occupation of the suit property and did not seek an eviction order against them, yet he maintains that they are the ones in possession. This points to the fact that the Plaintiff appears to have sued the wrong parties or failed to sue the offending parties.

Thirdly, the Plaintiff has prayed that he alternatively be refunded all the sums of money that he has paid to the Defendant. Special damages have to be specifically pleaded. A careful study of the Plaintiff filed herein reveals that no specific amount was pleaded. It is only in his oral testimony that the Plaintiff mentioned the various sums of money that he paid to the Defendant. Those sums were not specifically pleaded and cannot therefore be refunded.

The overall outcome is that the Plaintiff has not proved his case against the Defendant. This suit is accordingly dismissed with no order as to costs.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 1<sup>ST</sup> DAY OF SEPTEMBER 2017.**

**MARY M. GITUMBI**

**JUDGE**