



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ELC CIVIL SUIT NO. 461 OF 2011

JACKSON WAWERU NDUNGU & 24 OTHERS PLAINTIFF

VERSUS

KIMURI HOUSING COMPANY LIMITED..... DEFENDANT

JUDGMENT

PLEADINGS

Plaintiffs are 25 in number. They have sued Kimuri Housing Co. Ltd vide a plaint filed in court on 5/9/11. They aver that they bought parcels of land measuring 40 by 80 ft in Kahawa Wendani L.R. No. 8226/26 which was under the name of trustees of Ruiru G.R Cattle Group. Defendant was to facilitate the subdivision of the said land and to ensure that plaintiffs got titles. Plaintiffs pray for:

- 1) A declaration that the defendant is bound to provide the plaintiffs with titles in respect to Plot Nos. 32, 5, 17, 29, 23, 26, 7, 18, 20, 22, 12, 43, 34, 28,13,38,11,24,3,14,15 and 16 in Land Parcel L.R. No. 8226/26.
- 2) The defendant be and is hereby ordered to surrender the certificate of title No. L.R. 41361 with respect to Land Parcel L.R. No. 8226/26 together with approved subdivision plans, deed plans, rates clearance, rent clearance certificate and consent to transfer and all other completion documents.
- 3) Cost of this suit.

A Memorandum of Appearance was filed on 22/12/11 for and on behalf of the defendant. However, defendant did not file a defence, nor did it defend the suit during the trial. When the matter came up on 29/3/13, Counsel for the plaintiff's informed the court that matter was part heard whereby a plaintiff had testified way back on 16/2/15.

Plaintiff's case was then closed without calling any further evidence.

EVIDENCE

1st plaintiff is the one who had testified on behalf of the rest of the plaintiff's. PW1's evidence is that defendant is a land buying company. He relied on his statement of 2/9/11 and the documents filed thereon. PW1 further states that the main title was No. L.R. 8226/26. He bought a plot No. 32 whereas the other plaintiff's bought plots numbers 17, 29,23,26,7,18,20,22,12,43,34,28,13,38,11,24,3,14,15 and 16.

Some plaintiffs own plots jointly. They desire to have titles for their respective parcels of land but that the defendant has been unwilling to facilitate the process.

DETERMINATION

Plaintiffs have in their possession documents titled “**Certificate of Ownership**”. The certificates are issued by the defendant. The Title No. L.R. 8226/26 is captured in all the “Certificates of Ownership” documents. The phenomenon of land ownership in land buying companies has been a persistent thorn in the flesh of victims who cling on the pieces of papers called “Certificates of Ownership or share certificates” for years on end. It is desirable that such issues should be brought to a logical conclusion as they tend to breed serious acrimony if they are not resolved.

I find that on 16/2/15 when PW1 testified, the court was adjourned to call the Land Registrar to produce the records in respect of the suit land. The plaintiffs there after abandoned this line of evidence. It is the view of this court that such evidence would have shed light on the history of the land and its current status.

That notwithstanding, the defendants have not defended the claim yet they filed a Memorandum of Appearance which means they are aware of the suit. Further I note that in the initial stages of the suit, that is on 3/5/2012 a consent was entered into in terms of the following;

“That defendant by itself, its servants or agents be and is hereby restrained from offering for sale, charging, mortgaging or encumbering the Land Parcel No.L.R 8226/26. That the matter be mentioned 6/7/12 to record a consent”

A Mr. Kimani JG appeared as counsel representing the defendants. Defendants don’t appear to have been interested in the matter there after and no consent was recorded. Going by this consent of 3/5/12, it means the Suitland is still available for the plaintiffs. I therefore find that plaintiffs have proved their case on a balance of probability.

Orders are given as follows:

- a) A declaration is hereby made that defendant is bound to provide the plaintiffs with titles in respect of plot numbers 32, 5, 17, 29, 23, 26, 7, 18, 20, 22,12, 43,34, 28,13, 38,11, 24,3,14,15, and 16 in land parcel LR. NO.8226/26.**
- b) The defendant be and is hereby ordered to surrender the certificate of title No. L.R. 41361 with respect to Land Parcel L.R. No. 8226/26 together with approved subdivision plans, deed plans, rates clearance, rent clearance certificate and consent to transfer and all other completion documents.**
- c) Defendant is condemned to pay costs of the suit.**

DATED AND SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF NOVEMBER, 2017

HON. L.N. MBUGUA

ELC JUDGE

IN THE PRESENCE OF:-

Kimani for Plaintiff