



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUNGOMA.**

**ENVIRONMENT & LAND CASE NO. 100 OF 2014.**

**RABECA WINFRED ASIMU OMIDO.....PLAINTIFF**

**VERSUS.**

**THE SECRETARY**

**THE COUNTY GOVERNMENT OF BUNGOMA.....DEFENDANT**

**JUDGMENT.**

[1] On 28<sup>th</sup> May 2014 Rebecca Winfred Asimu Omido sued the Secretary the County Government of Bungoma and prayed for a permanent injunction restraining the defendants by themselves, their agents, servants workers from entering, harassing and otherwise in any manner interfering with the plaintiffs occupation and use of leasehold title Number Bungoma/Municipality/800.

[2] To prove her claim she produced a list of eighteen exhibits namely;

1. *Certified of Leasehold Title Number BUNGOMA/MUNICIPALITY/800.*
2. *Certificate of search Title Number BUNGOMA/MUNICIPALITY/800.*
3. *Letter of Allotment dated 23/11/1995.*
4. *Certificate of tests on concrete on commercial house on Plot Number 800 BUNGOMA dated 18/6/2007.*
5. *Certificate of test on concrete on commercial house on Plot Number 800 BUNGOMA.*
6. *Ministry of Roads and Public Works dated 23/7/2007.*
7. *Application for Development Permission.*
8. *Inspection Card for multi-storey building.*
9. *Rates clearing certificate dated 4/1/2006.*
10. *Lease Registration.*
11. *Receipt for approval from department of Lands dated 22/3/1996.*

12. *Receipt for application for approval from Municipality Council of Bungoma dated 10/3/2005.*
13. *Receipt for application for plan approval from Municipal Council of Bungoma dated 10/3/2005.*
14. *Receipt for plan approval from the Ministry of Health dated 4/3/2005.*
15. Bundle of receipts for rates.
16. Approved plan for Title Number BUNGOMA/MUNICIPALITY/800.
17. *Bundle of photos of commercial building on Title Number BUNGOMA/MUNICIPALITY/800.*
18. Land Rate Receipt dated 17/1/2014.

[3] The plaintiff in her evidence gave evidence and said that she was a Civil Servant working in Bungoma as a District Probation Officer and that she retired in 1999. That during this time, plots were advertised for allotment to the Public in Bungoma. She gave evidence that she applied for the same in writing. She applied for a plot in Bungoma County. The application was to the District Commissioner Bungoma. She states that she was called for an interview on her capacity to build on the plot. The plaintiff said that she was given a letter of allotment and she produced an original of the same. She said that she was supposed to pay Kshs.14,000/= as a stand premium and other charges for the same. She alleged that she paid the said amount. She stated that she was later sent a lease document by the Commissioner for Lands which she produced in court. She was issued with a lease certificate dated 11.9.2002. She said that she started to build a house whose plan was approved by the Physical Planners of the Municipal Council of Bungoma and Public Health. The application for approvals were also produced in Court plus all the other documents earlier stated.

[4] The plaintiff said that it is not true that she grabbed the plot subject to the suit. She said that she got the plot through the right way. She said that the plot is residential and that she had not changed user. She said that she wanted the defendant restrained by the Court from interfering with the user of her property.

[5] The defendant filed his defence on 9<sup>th</sup> October, 2014. The defendant alleged that the lease for land parcel No. Bungoma/Municipality/800 was irregularly issued to the Plaintiff. That the same was fraudulently issued by conniving with the agents of Commissioner of Lands since the same was a government land meant for the construction of Information office and Labour office plus Administration offices and that the said plot was not reserved for any residential houses as per records held by the Ministry of Urban Development and Housing 1981. The particulars of fraud were also set out in the statement of defence. The particulars aforesaid zeroed in a falsifying documents and convince with Government officers in the Ministry of Lands.

[6] The defendant offered no further evidence choosing to rely on the Cross Examination of its Counsel on record and its pleadings duly filed in Court.

[7] During the Cross Examination of the plaintiff, the plaintiff was not able to produce to Court her application. She stated that her application was made a long time ago. She admitted that the letter of allotment from the Commissioners of Lands office allotted the land on behalf of the County Council of Bungoma. That she was allotted 0.11 hectares while on her lease the area was 0.0998 and the lessor was Bungoma Municipal Council. The plaintiff when cross examined was not able to prove payment of the Kshs.14,443.00 the amount demanded by the letter of allotment dated 23/11/95. She only said that she paid that amount in the bank by instalments.

She admitted that the certificate of lease was issued on 11<sup>th</sup> of December, 2002 but it showed that the Lease was for 99 years from 1/12/95 some Seven (7) years before the lease was registered.

The plaintiff in answering questions from the counsel for the defendant

Mr. A.W. Kituyi said that she never applied for change of user from a commercial plot, a Motel to Residential houses. She admitted that she has been paying Rates when the Lease demands Rent.

[8] The respondent filed its written submissions and argued that the person sued does not exist in Law. That Section 6 of the County Government Act is clear on who can sue and/or be sued. It was also argued that the Plaintiff did not prove how she ended with Plot number Bungoma/Municipality/800 while she was allotted plot No. 20 and was unable to prove payment for the same.

[9] The issue for determination is whether the plaintiff has proved her case to warrant the grant of the orders sort for injunction against the defendant. The evidence of the plaintiff was purely on how she was allocated plot number Bungoma/Municipality/800. All the documents produced 1-18 were only showing how the plot was allocated to her and that it is hers.

The issue of ownership herein raises several issues which begs answers, firstly, that there was no proof of any application for allotment of the plot. Secondly the letter of allotment was of 23/11/1995 while the certificate of lease was of 11/12/2002 Seven years later. The letter of offer aforesaid contains a clause which says that acceptance and payment respectively should be made within 30 days from the date of the same otherwise the letter of offer will be construed as lapsed. Was there an acceptance and payment within the time stipulated? Why was the lease issued Seven (7) years later? Why does the certificate of lease grant a Lease period of Seven (7) years before its registration? Thirdly, the letter offered 0.11 hectares the lease was for 0.998 hectares. Offer Letter was on behalf of the County Council of Bungoma, the lease was issued on behalf of the Municipal Council of Bungoma why was there a disparity on who is the Lessor? Fourthly, applicant applied for a plot to build a motel which was a Commercial enterprise, the tests produced for concrete on plot 800 was for a Commercial house why was the user changed to a Residential House? Who allowed it? Wasn't a consent required for that? Fifthly, only Rates were paid for this plot, was the Rent shown on the title as Kshs.7,000/= per year ever paid?

[10] The applicant in his statement dated 26<sup>th</sup> August, 2014 says he was allotted plot No. 155 she attached an advisory plan showing plot 155 how was it changed to Bungoma/Municipality/155? Who changed it? There are more questions than Answers on the allotment of Bungoma/Municipality/155 to the Plaintiff.

[11] This case is for an injunction by the Plaintiff. There is no counterclaim by the defendant asking me to cancel this title. The plaintiff has concentrated in her claim to prove how the plot was Legally allotted to her. There was no proof at all on how and when the officer of the County Government of Bungoma harassed her. Indeed, there was no evidence at all adduced in that regard. On that score alone, this suit must fail. On perusal of the pleadings, the person sued is the Secretary, County Government of Bungoma. A person who has no Legal standing to be sued. On that score too the suit fails as well.

As there is no defendant capable of being sued there shall be no orders as to the costs. Suit is dismissed.

Judgment read in Open Court before Counsels Watanga and Kituyi.

**Dated at Bungoma this 18<sup>th</sup> day of December, 2017.**

**S. MUKUNYA**

**JUDGE.**

**In the presence of:**

Hon. S. Mukunya (Judge)

Joy: Court Assistant

Mr. Watanga for the Plaintiff

Mr. Kituyi for the Defendant