



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
ELC CIVIL CASE NO. 2228 OF 2007

CATHERINE NYAMBURA.....PLAINTIF

=VERSUS=

- 1. PETER SHIKHULE**
- 2. PUALINE WAHOME**
- 3. PAUL RADNALO ODWESO**
- 4. CITY COUNCIL OF NAIROBI**
- 5. REGISTRAR OF LANDS AT NAIROBI.....DEFENDANTS**

J U D G M E N T

1. In her Complaint dated 29th October, 2007, the Plaintiff is seeking for a declaration that she is entitled to be registered as proprietor of land known as L.R. No.Nairobi/Block 63/418.
2. The Plaintiff has averred in the Complaint that she is entitled to the land having acquired the same from the 1st and 4th Defendants for valuable consideration of Kshs.550,000.
3. According to the Plaintiff's Complaint, after paying up all sums due, she discovered that the 4th Defendant had by an Agreement for lease dated 18th January, 1999 granted to the 1st Defendant a leasehold interest of the land.
4. The 4th Defendant filed a Defence and denied the allegations in the Complaint.
5. The other Defendants neither entered appearance nor filed a Defence.
6. The Plaintiff, PW1, informed the court that she entered into an agreement dated 8th July, 1998 with the 1st Defendant to purchase plot number 307 situate within Jamhuri Estate, Phase II within Nairobi; that the 1st Defendant gave her the letters of allotment of the said plot and that on 22nd December, 1998, the 4th Defendant prepared the Assignment of the Lease for the suit property dated 22nd December, 1998 which was duly executed.
7. PW1 informed the court that later on, she discovered that the 4th Defendant had on 18th January, 1999

executed another Assignment of Lease in respect to the suit property in favour of the 1st Defendant.

8. The evidence of PW1 was that when she did a search again in the year 2002, she found out that the suit property had been registered in the name of the 2nd Defendant and that in the year 2007, the search showed that the land had passed to the 3rd Defendant.

9. PW1 informed the court that she is in possession of the land and that she is the one entitled to the land.

10. PW1 produced in evidence the Sale Agreement of 8th July, 1998 that she entered into with the 1st Defendant, the letter of allotment issued by the 4th Defendant and dated 21st July, 1998 and a duly signed Assignment of Lease of Plot No.307, Jamuhuri Phase II dated 22nd December, 1998.

11. The Plaintiff also produced in evidence an agreement for lease dated 18th January, 1999 which was entered into between herself and the 4th Defendant and a search in respect to parcel of land known as Nairobi/Block 63/418 dated 8th June, 2007.

12. The Defendants did not call any evidence. The Plaintiff's advocate filed written submissions which I have considered.

13. The evidence produced by the Plaintiff showing that she purchased the suit land from the 1st Defendant has not been challenged.

14. Indeed, no evidence has been produced to challenge the Plaintiff's assertion and evidence that she was issued with a letter of allotment by the 4th Defendant after the said purchase.

15. Consequently, the evidence before this court shows that the suit property should have been registered in favour of the Plaintiff.

16. Considering that there is no evidence to show that Plot No. 307, Jamhuri Phase II which the Plaintiff purchased is different from parcel of number Nairobi/Block 63/418, I find and hold that the Plaintiff has proved her case on a balance of probabilities.

17. For those reasons, I allow the Plaintiff's Plaint dated 29th October, 2007 in the following terms:-

(a) A declaration be and is hereby issued that the Plaintiff is entitled to be registered as proprietor of land known as Nairobi/Block 63/418.

(b) An order be and is hereby issued directed to the 5th Defendant to cancel and rectify the register in respect to land known as Nairobi/Block 63/418 and register the Plaintiff as the proprietor of the said land forthwith.

(c) The Defendants to pay the costs of the suit.

Dated, signed and delivered in Malindi this 25th day of **November**, 2016.

O. A. Angote

Judge