



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

**ELC NO. 640 OF 2012**

**PETER MIRING'U KAGWI.....PLAINTIFF**

**VERSUS**

**EMBAKASI RANCHING COMPANY LIMITED.....DEFENDANT**

**JUDGMENT**

This suit was not defended. By a plaint dated 27<sup>th</sup> September 2012 the Plaintiff sought the following reliefs against the Defendant:-

a) A temporary injunction restraining the Defendant, its agents, servants or any other persons whether acting on their own or on the Defendant's behalf from alienating, transferring, developing or howsoever dealing with the following plots:-

- (i) Plot Number L 115 and L 116 (Survey plan map for Mungania 1 Block 105).
- (ii) Plot Number L 115 B (Block 136/2162)
- (iii) Plot Number L 116 B (Block 136/2143)
- (iv) Plot Number H 263 (Survey plan map for Mungania 1 Block 105)
- (v) Plot Number H 263B (Block 136/2161).

b) An order directing the Defendant to forthwith and unconditionally release to the Plaintiff the title deeds for the following plots:-

- (i) Plot Number L 115 and L 116 (Survey plan map for Mungania 1 Block 105).
- (ii) Plot Number L 115 B (Block 136/2162)
- (iii) Plot Number L 116 B (Block 136/2143)
- (iv) Plot Number H 263 (Survey plan map for Mungania 1 Block 105).
- (v) Plot Number H 263 B (Block 136/2161).

c) An order directing the Defendant to deliver to the Plaintiff, and at the Defendant's expense, vacant possession of the plot (i) to (v), both inclusive, in (a) above.

d) Costs of the suit plus interest at 14% from the date of filing suit until payment in full.

e) Any other and/or further relief as this honourable court may deem fit to grant.

The Plaintiff averred that the Defendant was at all material times a land buying Company which used to purchase land on behalf of its members or shareholders. The Plaintiff averred that the Defendant in the course of its business was registered as the proprietor of all that parcel of land known as L.R No. 10904/2 situated off Komarock Road, Nairobi measuring 2,024 hectares. The Plaintiff averred that following the invitation from the Defendant, he purchased two (2) shares in the Defendant Company and purchased another one (1) share for his deceased wife, Jane Wambui Miring'u ("the deceased") to hold in trust for him. He averred that the deceased and he were issued with share certificates in 1978 for the shares which they purchased as aforesaid. By virtue of his shareholding in the Defendant, he was issued with a provisional letter of allotment of portions of L.R No. 10904/2 (hereinafter "Plot No. 10904/2") namely, Plot No. L 115 and Plot No. L 116 in 1982. His deceased wife, Jane Wambui Miriung'u (hereinafter only referred to as "the deceased") was allocated Plot No. H 263 provisionally. His plots were on the Survey Plan for Mungania 1 Block 105 together with the deceased's plot. The Plaintiff averred that in 1991, he paid to the Defendant a sum of Kshs.10,500 for the three (3) plots which were allocated to him and the deceased for civil engineering services. This payment was a condition precedent to the confirmation of allocation of plots to the allottees. In 1993, the Defendant allocated to him two (2) bonus plots namely L 115 B (Block 136/2162) and L 116 B (Block 136/2143) while the deceased was allocated one (1) bonus plot namely, Plot No. H 263 – B (Block 136/2161). These bonus plots were allocated to them after paying membership and survey fees. The Plaintiff averred that in the year 2005, he made further payments to the Defendant to cater for among others, beacon confirmation, beacon replacements and site visits. The Plaintiff averred that he made all necessary payments and fulfilled all conditions which were specified in the letters of allotment that were issued to him and the deceased by the Defendant and as such acquired proprietary interest in the aforesaid parcels of land and became entitled to be issued with the title deeds for the said plots.

The Plaintiff averred that despite making the payments aforesaid, the Defendant has neglected or refused to issue him with the title deeds for the main and the bonus plots. The Plaintiff averred that when he visited the said plots in May, 2012, he found out that the same had been encroached onto by unknown persons and when he sought information from the Defendant on the persons who had encroached on the said parcels of land, the Defendant did not provide the same neither did it offer any assistance. It is on account of the foregoing that the present suit was brought for the reliefs set out above.

The Defendant was served with summons to enter appearance but failed to do so. Upon request by the Plaintiff, interlocutory judgment was entered against the Defendant in default of appearance on 9<sup>th</sup> May, 2013. When the suit came up for formal proof on 14<sup>th</sup> April 2016, the Plaintiff gave evidence and did not call any witness. In his testimony, the Plaintiff reiterated the contents of the plaint which I have highlighted hereinabove at length. The Plaintiff stated that the three (3) shares that the deceased and he acquired from the Defendant and the three (3) bonus shares which they were issued to them entitled them to six (6) parcels of land from the Defendant which were duly allocated to them. The Plaintiff stated that he was shown the six (6) plots whose boundaries were clearly marked with beacons. He stated that he made all the requisite payments to the Defendant to enable it process title deeds in his favour in respect of the six(6) plots and that when he went to ask for the said title deeds the Defendant's officers chased him away from their office. The Plaintiff produced as exhibits the share certificates which were issued in his favour and in favour of the deceased by the Defendant. He also produced; letters of allotment through which the suit properties were allocated to them, the survey plans showing the ground location of the suit properties, copies of the receipts for the payments he made to the Defendant for the suit properties and for processing the titles and developing physical infrastructure and a letter of demand that they sent to the Defendant through their advocates on record demanding among others, the title deeds for the suit properties.

I have considered the evidence on record. I am satisfied that the Plaintiff has proved his case against the Defendant on a balance of probabilities. The Plaintiff has proved that the deceased and he held shares in the Defendant Company and that the deceased's shares were held in trust for him. He has proved further

that the six (6) shares which they had, entitled them to six (6) portions of L.R No. 10904/2 that was owned by the Defendant and that the Defendant indeed allocated to them six (6) plots following the subdivision of L.R No. 10904/2. The Plaintiff has proved further that he complied with all the terms of the allotment of the said plots by paying all the requisite fees for title processing and infrastructural development.

I am persuaded that the Plaintiff fulfilled his part of the agreement that he entered into with the Defendant and that it is the Defendant who breached its part of the bargain. What the Plaintiff has sought is essentially specific performance of the agreement that he entered into with the Defendant and which was evidenced by among others the share certificates and letters of allotment aforesaid. As I have stated above, the suit was not defended. There is no suggestion by the Defendant that any of the reliefs sought by the Plaintiff cannot be granted by the court or that it would have any difficulty in complying with any orders sought if granted by the court.

The Plaintiff having proved his case and there being no impediment to the granting of the orders sought, the Plaintiff is entitled to prayers (a) and (b) of the Plaint dated 27<sup>th</sup> September 2012. With regard to prayer (c) of the plaint, no evidence was placed before the court showing that the Defendant is occupying the suit properties. From the material before the court, the suit properties are occupied by “unknown trespassers or grabbers”. See, P Exh. 1 at page 81 to 83. There is no evidence that the so called trespassers or grabbers were put on the suit property by the Defendant. It would not therefore be just to order the Defendant to evict them from the suit property at its own expense. The Plaintiff did not claim that the Defendant had stopped him from taking possession of any of the suit properties. Infact the Plaintiff gave evidence that the Defendant had given him authority to develop Plot No. L 115 (See P. Exh. 1 at page 80). I am of the view that it will be up to the Plaintiff to take necessary action to evict those who have trespassed on the suit properties. I would however order the Defendant to give possession of the suit properties in case it is in occupation of any.

In conclusion I hereby enter judgment for the Plaintiff against Defendant on the following terms;

(a) An injunction is issued restraining the Defendant, its agents, servants or any other persons whether acting on their own or on the Defendant’s behalf from alienating, transferring, developing or howsoever dealing with the following plots:-

- (i) Plot Number L 115 and L 116 (Survey plan map for Mungania 1 Block 105).
- (ii) Plot Number L 115 B (Block 136/2162)
- (iii) Plot Number L 116 B (Block 136/2143)
- (iv) Plot Number H 263 (Survey plan map for Mungania 1 Block 105)
- (v) Plot Number H 263B. (Block 136/2161).

(b) An order is issued directing the Defendant to forthwith and unconditionally release to the Plaintiff the title deeds for the following plots:-

- (i) Plots Number L 115 and L 116 (Survey plan map for Mungania 1 Block 105).
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