



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 460 OF 2013

JOHN WATHUO NDEGWA
.....PLAINTIFF

VERSUS

**JOSEPH MAINGI KIMANI (Sued in his capacity as the Secretary to Menengai Crater
Development Self Help Group).....DEFENDANT**

JUDGMENT

(Dispute over ownership of land in a Self Help Group; understanding that members would own plot per share; plaintiff with two shares but demanding a third plot; suit dismissed).

A. INTRODUCTION AND PLEADINGS

1. This suit was commenced by way of plaint filed on 12 July 2013. The plaintiff pleaded that he is the bona fide owner of a Plot A3 measuring 50 X 100 feet or 0.0465 Ha of the land parcel Bahati/Kabatini Block 1/3493, which plot he has pleaded was allocated to him by virtue of him being a member of Menengai Crater Development Self Help Group (Menengai Crater SHG). He pleaded that he joined the SHG in January 2007 after paying registration fees of Kshs. 400 and that after becoming a member, he bought 2 shares. He also pleaded that he has been treasurer of the SHG and that he is aware that the SHG cleared the purchase for the parcel Bahati/Kabatini Block 1/3493 in February 2008. He has pleaded that since he has 2 shares, he is entitled to get two plots of 50 X100 feet from the land parcel Bahati/Kabatini Block 1/3493. He has pleaded that initially there were 12 members entitled to get a share of plots of 50 X 100 feet from the parcel of land Bahati/Kabatini Block 1/3493 but later the numbers were increased by the officials to 15 persons. He has pleaded that in March 2008, he was awarded a plot No. A3 of 50 X 100 feet but was still to be allocated the second plot by virtue of his 2 shares. He has pleaded that later, the SHG purchased a second parcel of land for sub-division being land parcel Bahati/Kabatini Block 1/3287, and that because he did not get his second plot in the land parcel Bahati/Kabatini Block 1/3493, he was awarded two plots of approximately 40 X 100 feet from the land parcel Bahati/ Kabatini Block 1/3287. It is pleaded that on 28 June 2013, the defendant (the Secretary of the SHG) invaded the plot No. A3 in Bahati/ Kabatini Block 1/3493 and indicated that the plaintiff was no longer a group member and that he was not entitled to cultivate the plot A3 since he held two plots in the land parcel Bahati/ Kabatini Block 1/3287. It is his view that the acts of the defendant are fraudulent. In the suit, the plaintiff has asked for orders of permanent injunction to restrain the defendant from interfering with the Plot No. A3 and a declaration that the plaintiff is the bona fide legal owner of the said plot.

2. In his Statement of Defence, the defendant pleaded that the plaintiff has never been the bona fide owner of the plot No. A3. He pleaded that no member of the SHG becomes proprietor of any given land

solely by virtue of his membership but that protocol and the Group's By-Laws dictate that plot be subjected to balloting. It is pleaded that the Group had a membership of 36 persons only but that the plaintiff and previous officials brought utter confusion in bringing in other members not allowed by the Group. It is pleaded that the plaintiff already has two plots but is illegally demanding a third plot which is pleaded to be fraudulent on his part.

B. EVIDENCE OF THE PARTIES

(i) Evidence of the Plaintiff

3. The plaintiff testified that on joining the Group, he bought 2 shares at kshs. 50,000/= and was allocated the Plot No. A3 from the land parcel Bahati/Kabatini Block 1/3493. He testified that the object of the Group was to buy land and sub-divide it amongst its members. This land parcel Bahati/Kabatini Block 1/3493 was purchased from one Margaret Wangechi Chomba vide an agreement signed on 5 September 2006. He testified that 12 persons were to get plots from this land but the Group ended up having 15 members as a result of which he missed the second plot that he was entitled to. He used to be Treasurer of the Group until he was removed in 2013. He testified that when the Group purchased the second parcel of land, that is Bahati/Kabatini Block 1/3287, he was awarded two plots each measuring 40 X 100 feet, being parcels No. 11020 and 11021. He testified that these two plots were the equivalent of a plot from Bahati/Kabatini Block 1/3493. Later, when the officials saw that he held three plots, they decided to take away the Plot No. A3 which is what he held in the parcel No. 3287. He then placed a caution in the register of the said parcel. He refuted that vide a meeting held on 19 October 2008, a resolution was passed that members be given plots measuring 40 X 80 feet. He testified that the plot A3 was given to one John Kuria Kamau who has never been a member of the Group. He testified that what he wants is to be allowed to retain the Plot No. A3 alongside the two other plots in the land parcel No. 3287

4. In cross-examination, the plaintiff agreed that the agreement for purchase of the land parcel No. 3493 was made before he joined the Group in the year 2007. He stated that he paid for two plots of 50 X 100 each at a consideration of kshs. 25,000/= per plot.

With that evidence, the plaintiff closed his case.

(ii) Evidence of the Defence.

5. DW-1 was the defendant. He is the current Secretary of the SHG. He testified that the SHG was founded in the year 2004 with 36 members. Money was contributed to buy land for purposes of subdividing it amongst the members and the first parcel of land being Bahati/Kabatini Block 1/3493 (parcel No.3493) was purchased from Margaret Wangechi. However, this land ended up having some issues as it was registered in the name of Joseph Chomba Mwirigi who was deceased and it also had a restriction by the Kenya Industrial Estates (KIE). They then decided to purchase a second parcel of land as they waited to sort out the issues of the first parcel. By the year 2008, the membership had expanded and he testified that it was resolved that each member gets a plot of 40 X 80 feet for each share, either from the first parcel of land or from the second parcel of land. He testified that since the plaintiff had two shares, he got two plots from the second parcel of land which had no problems. He testified that the titles of the plaintiff were duly processed being Bahati/Kabatini Block 1/ 110020 and 110021. Later the plaintiff placed a caution on the first parcel (parcel No. 3493). It was his evidence that there was no reason for this since the plaintiff already had his two parcels of land. The Group tried to resolve the matter before the Chief who held in favour of the Group. The matter was also mediated before the Land Registrar who also held for the Group and proceeded to remove the caution. The Group then sub-divided the land parcel No. 3493 and allocated the plots to the membership. However the plaintiff claimed that he is entitled to a plot from this land parcel. He testified that the Group resolved to sell the plot claimed by the plaintiff. It was his view that the plaintiff has no claim as he has already got his two plots.

In cross-examination, the defendant testified that he holds a plot measuring 50 X 100 feet. He stated that when the Group was formed, the intention was for each member to have land measuring 50 X 100 feet. He stated that as the initial settlement in the first land to be purchased was of 50 X 100 feet.

6. DW-2 was Kuria Mwati who testified that he has been a member of the Group since the year 2004. He testified that the first land purchased had issues and sub-division was therefore not done immediately. The second parcel purchased was however sub-divided quickly into portions of 40 X 80 feet and title deeds issued to those who had fully paid. He testified that the plaintiff got title to two parcels of land in the second land. He however insisted on retaining the plot in the first parcel of land. He testified that this plot has already been sold so that the proceeds can pay for processing of title deeds.

7. In cross-examination, he testified that he himself has land of 50 X 100 feet in the first parcel of land.

With the above evidence, the defendant closed his case.

C. SUBMISSIONS OF COUNSEL

8. In his submissions, counsel for the plaintiff submitted that the plaintiff had a contractual relationship with the Group that he would be issued with two plots measuring 50 X 100 feet. She submitted that the subject matter of the suit, Plot A3 was directed to be preserved pending hearing of the suit and that if it was sold, then the defendants are in contempt of court. She submitted that the defendant is corrupt and intends to contravene the objects of the Group by allocating the plaintiff acreage that is less than the requisite 50 X 100 feet. In her conclusion she submitted that the plaintiff's two plots of 40X 80 feet are the equivalent of one plot of 50 X 100 feet and that the plaintiff cannot be counted as having two parcels of land.

9. For the defendant, it was submitted that the only issue for trial is to determine who owns the Plot No. A3. He submitted that the law governing a Self Help Group would be its By-Laws and its Constitution but only minutes of the Group have been presented. He submitted that the plaintiff accepted to receive two plots of 40 X 80 feet. He also submitted that there is no Plot A3 as it has already been sold.

D. DECISION

10. It is with the above pleadings, evidence and submissions that I need to decide this matter. I think, as correctly put by counsel for the defendant, the only issue here is to resolve whether the plaintiff is entitled to own the Plot No. A3 which is a plot measuring 50 X 100 feet, out of the land first purchased by the Group.

11. The evidence tendered by both parties is not really at variance in the important aspects. The Group in issue was formed to buy land and later sub-divide it to its members. The Group first purchased the land parcel Bahati/Kabatini Block 1/3493 but there was delay in its sub-division as it had to undergo succession and removal of the restriction by KIE. It would appear however, that members had settled into plots of 50 X 100 feet in this first parcel of land and that the plaintiff had settled into the Plot A3, which is the plot in issue. The Group later purchased a second parcel of land. This second parcel of land had no problems and it was quickly sub-divided amongst the membership with each member getting a plot measuring 40 X 80 feet.

12. The plaintiff held two shares in the Group entitling him to two parcels of land. What he got was two parcels of land of 40 X 80 feet from this second parcel of land. It is his argument that he is still entitled to the plot of 50 X 100 feet from the first land parcel which he had been in occupation of. The position of the defendant is that the plaintiff has already got two plots, and he cannot benefit from a third one.

13. I think what galls the plaintiff is that he has got two plots of 40 X 80 feet and not two plots of 50 X 100 feet, or at the very least, one plot of 50 X 100 feet. It was put forth by counsel that two plots of 40 X 80 feet are the equivalent of one plot of 50 X 100 feet but even without going too much into arithmetic, this cannot be. You would need two plots of 25 X 50 feet to make one plot of 50 X 100 feet.

14. On the facts of the case, I can only blame the plaintiff. He concedes that all he is entitled to is two

plots. He has already got two plots. Granted, the plots are not of 50 X 100 feet but of 40 X 80 feet. But why did he accept to receive these two plots, and process title in his name, rather than wait for the processing of the plots in the first parcel of land that was purchased, which plots measure 50 X 100 feet? He obviously cannot retain three plots but only two. If he seriously wanted the plot measuring 50 X 100 feet in the first parcel of land, then he ought not to have received title to the two plots of 40 X 80 feet. By his conduct, he did accept to receive title to the two smaller plots, and he is now estopped from claiming the third larger parcel. If he gets a third plot, then he will stand to unjustly enrich himself, for he will end up having three plots rather than his rightful entitlement of two plots. As I stated earlier, if the plaintiff seriously wanted the 50 X 100 plot in the first parcel of land, he ought not to have received the two titles to the plots having the size of 40 X 80 feet. He should have rejected them.

15. Maybe matters would have been different if I had been shown a contract between himself and the Group (forget for a moment that the Group is not a legal entity capable of contracting in its own name) which entitled him specifically to the Plot A3 measuring 50 X 100 feet. But there is none. To me it matters not that the land was sold or given to another person. The plaintiff cannot lay claim to it having already accepted two other plots, albeit of smaller size.

16. One challenge that I have encountered in this matter is that there is actually no law, at least to my knowledge, that regulates Self Help Groups. Probably it is time that the Government provided a law governing these Self Help Groups or ban them all together. It is not proper for there to be a legal vacuum on such organizations.

17. The upshot of the above is that I find no merit in the plaintiff's case. It is hereby dismissed with costs.

Dated, signed and delivered in open court at Nakuru this 23rd day of April 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU

In presence of: -

Ms. Mwera holding brief for Ms. Kibiriu for plaintiff

N/A for M/s Kerongo & Co for defendant

Emmanuel Maelo : Court Assistant

MUNYAO SILA

JUDGE

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