



Karuta & another v Embakasi Ranching Company Ltd & 8 others (Environment & Land Case 292 of 2019) [2024] KEELC 3862 (KLR) (30 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3862 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 292 OF 2019**

**MD MWANGI, J
APRIL 30, 2024**

BETWEEN

PENNINAH KARUTA 1ST PLAINTIFF

JOHN NJARIA MUTUNGA 2ND PLAINTIFF

AND

EMBAKASI RANCHING COMPANY LTD 1ST DEFENDANT

THE CHIEF LANDS REGISTRAR 2ND DEFENDANT

LUCY NYOKABI MATHENGE 3RD DEFENDANT

JOHN KANOTHA MUHIA 4TH DEFENDANT

DANIEL MUKIRI KIMANI 5TH DEFENDANT

PETER KIMACHIA GITAU 6TH DEFENDANT

PAUL LIUHI THIRIKWA 7TH DEFENDANT

CHARITY MAKENA MTWARUCHU 8TH DEFENDANT

MARYLENE WAMBUI KAMAU 9TH DEFENDANT

JUDGMENT

1. Vide a Complaint dated 25th March, 2019, the Plaintiffs pray for Judgment against the Defendants for:
 - a. A permanent injunction restraining the Defendants either by themselves or through their agents, employees, servants and/or proxies from registering, transferring or in any other way taking or assuming possession and ownership of land parcels numbers Nairobi Block 136/6383, Nairobi Block 136/6395, Nairobi Block 136/6389, Nairobi Block 136/6078, Nairobi Block 136/6079, Nairobi Block 136/6398, Nairobi Block 136/6375, Nairobi Block



136/1754, Nairobi Block 136/6376, Nairobi Block 136/6379, Nairobi Block 136/1754, Nairobi Block 136/6376, Nairobi Block 136/6379, Nairobi Block 136/6378, Nairobi Block 136/6394, Nairobi Block 136/6327, Nairobi Block 136/6312, Nairobi Block 136/6388, Nairobi Block 136/6328, Nairobi Block 136/6329, Nairobi Block 136/1149, Nairobi Block 136/2179, Nairobi Block 136/1991, Nairobi Block 136/1992, Nairobi Block 136/3424, Nairobi Block 136/3425, Nairobi Block 136/3426 and Nairobi Block 136/3427 any other parcel which was originally plots numbers 6930, 6930B, 6929, 6929, 6291B, 7606, 7607, 1479, 1469, 1470, 1470B, 6078, 6978B, 6979, 6979B, 6980, 6981B, 6112, 6113, 6113B, V11006, V11007, V11008, V11009 and 1479B on Land Registration Number 12979/2.

- b. A declaration that land parcels numbers Nairobi Block 136/6383, Nairobi Block 136/6395, Nairobi Block 136/6389, Nairobi Block 136/6078, Nairobi Block 136/6079, Nairobi Block 136/6398, Nairobi Block 136/6375, Nairobi Block 136/1754, Nairobi Block 136/6376, Nairobi Block 136/6379, Nairobi Block 136/1754, Nairobi Block 136/6376, Nairobi Block 136/6379, Nairobi Block 136/6378, Nairobi Block 136/6394, Nairobi Block 136/6327, Nairobi Block 136/6312, Nairobi Block 136/6388, Nairobi Block 136/6328, Nairobi Block 136/6329, Nairobi Block 136/1149, Nairobi Block 136/2179, Nairobi Block 136/1991, Nairobi Block 136/1992, Nairobi Block 136/3424, Nairobi Block 136/3425, Nairobi Block 136/3426 and Nairobi Block 136/3427 any other parcel which was originally plots numbers 6930, 6930B, 6929, 6929, 6291B, 7606, 7607, 1479, 1469, 1470, 1470B, 6078, 6978B, 6979, 6979B, 6980, 6981B, 6112, 6113, 6113B, V11006, V11007, V11008, V11009 and 1479B on Land Registration Number 12979/2 belong to the Plaintiffs and an order directing the Defendants to register and forward documents to Chief Registrar of Lands showing that the Plaintiffs are the owners of the said lands.
 - c. An order directing the 2nd Defendant to cancel all entries, information and registration which may show that land parcels of land known Nairobi Block 136/6383, Nairobi Block 136/6395, Nairobi Block 136/6389, Nairobi Block 136/6078, Nairobi Block 136/6079, Nairobi Block 136/6398, Nairobi Block 136/6375, Nairobi Block 136/1754, Nairobi Block 136/6376, Nairobi Block 136/6379, Nairobi Block 136/1754, Nairobi Block 136/6376, Nairobi Block 136/6379, Nairobi Block 136/6378, Nairobi Block 136/6394, Nairobi Block 136/6327, Nairobi Block 136/6312, Nairobi Block 136/6388, Nairobi Block 136/6328, Nairobi Block 136/6329, Nairobi Block 136/1149, Nairobi Block 136/2179, Nairobi Block 136/1991, Nairobi Block 136/1992, Nairobi Block 136/3424, Nairobi Block 136/3425, Nairobi Block 136/3426 and Nairobi Block 136/3427 any other parcel which was originally plots numbers 6930, 6930B, 6929, 6929, 6291B, 7606, 7607, 1479, 1469, 1470, 1470B, 6078, 6978B, 6979, 6979B, 6980, 6981B, 6112, 6113, 6113B, V11006, V11007, V11008, V11009 and 1479B on Land Registration Number 12979/2 as belonging to persons other than the Plaintiffs as the owners of the said land and register the Plaintiffs as the owners of the said lands.
 - d. Costs of this suit.
 - e. Any other relief this court may deem just to grant.
2. The Plaintiffs' case is that the 1st Defendant Company was the registered owner of all that parcel of land known as Nairobi Land Reference Number 12979/2 (hereinafter referred to as "the mother title"). The land was subsequently subdivided and allocated to its members including the Plaintiffs.
 3. The Plaintiffs aver that the 1st Plaintiff owned plots numbers 6330, 6930B, 6929, 6929B, 6970, 7606, 7607, 1479, 1469, 1470, 1470B, 6078, 6978B, 6979, 6979B, 6980, 6981B, 7151, 6112, 6113, 6113B, V11006, V11007, V11008, V11009 while the 2nd Plaintiff owned plot number 1479B.



4. The Plaintiffs state that after titling and registration of the above stated Plots under the supervision of the 3rd, 4th and 5th Defendants, the Mother title became Nairobi Block 136 and the Plaintiffs' plots became Nairobi Block 136/ 6383, Nairobi Block 136/ 6395, Nairobi/ Block 136/ 6389, Nairobi Block 136/6078, Nairobi Block 136/ 6079, Nairobi Block 136/ 6398, Nairobi Block 136/ 6375, Nairobi Block 136/ 1754, Nairobi Block 136/ 6376, Nairobi Block 136/ 6379, Nairobi Block 136/ 6378, Nairobi Block 136/ 6394, Nairobi Block 136/ 3627, Nairobi Block 136/ 3612, Nairobi Block 136/ 6388, Nairobi Block 136/ 3428, Nairobi Block 136/ 3429, Nairobi Block 136/ 1149, Nairobi Block 136/ 2179, Nairobi Block 136/ 1991, Nairobi Block 136/ 1992, Nairobi Block 136/ 3424, Nairobi Block 136/ 3425, Nairobi Block 136/ 3426 & Nairobi Block 136/ 3427.
5. The Plaintiffs allege that the Defendants jointly, conspired and altered the 1st Defendant's register, records and survey maps and thereafter allocated the Plaintiffs' respective plots amongst themselves. The 2nd Defendant is in the process of fraudulently issuing title deeds to the other Defendants. The particulars of fraud include removing the Plaintiffs' names from the 1st Defendant's register and deceitfully replacing them with other people; receiving the Plaintiffs' money against their plots and failing to enter the same in the register; forging documents to show that people other than the Plaintiffs were owners of the respective plots; ignoring the original register which had the authentic list of members; creating parcel registers which were unknown to the general members of the 1st Defendant and altering crucial documents by erasing primary information.

1st, 3rd and 4th Defendant's Defence

6. The 1st, 3rd and 4th Defendants filed a joint statement of Defence dated 14th June, 2023. The 1st Defendant denies that it has issued titles for the suit properties to the other Defendants fraudulently and avers that the allocations and titling of the suit properties is lawful and legal.
7. The 1st, 3rd and 4th Defendants deny the assertions of fraud levelled against them. They aver that prior to coming to court, the Plaintiffs had filed a complaint for criminal investigations by the Land Fraud Unit at the Directorate of Criminal Investigations Headquarters, in which the 1st Defendant demonstrated that the Plaintiffs had been duly allocated all the Plots they were entitled to by the 1st Defendant.
8. They further assert that the Plaintiffs were unable to demonstrate to the Directorate of Criminal Investigations through evidence that they were entitled to the plots. The Plaintiffs were asked to avail to the 1st Defendant's documents proving ownership of the suit properties. Subject to the validity of their documents, the 1st Defendant would in turn allocate the Plaintiffs other properties. However, the Plaintiffs never complied.
9. On their part, the 3rd and 4th Defendants denied any proprietary interests in the suit properties and averred that they only acted as agents of the 1st Defendant. The suit as against them is a misjoinder and should be struck-out.
10. The 2nd, 5th, 6th, 7th, 8th and 9th Defendants did not enter appearance, neither did they file a statement of Defence despite service of summons to enter appearance.
11. The matter was initially slated for hearing on the 16th June, 2023. However, Counsel for the 1st, 3rd and 4th Defendant informed the court they had just filed their List of Documents. Counsel further informed the court that the parties were negotiating hence sought more time. The matter was taken-out. Unfortunately, the negotiations did not bear any fruits.
12. On the hearing date, despite service of the hearing notice, counsel for the 1st, 3rd and 4th Defendants did not show up. The matter therefore proceeded in their absence.



Evidence adduced by the Plaintiffs

13. Mr. John Njaria Mutunga, the 2nd Plaintiff herein testified as PW1 on his own behalf and on behalf of the 1st Plaintiff. He stated that the 1st Plaintiff is his wife and had authorized him to plead and testify on her behalf. He adopted his Witness Statement dated 25th March, 2019 as his evidence in-chief. He also produced the documents on the Plaintiffs' List of documents dated 25th March, 2019 which were marked as PE 1-4 in the order in which they are listed.
14. PW 1 testified that the Plots he is claiming do not have titles. They are vacant. They only have parcel numbers as demonstrated in the Plaint and in his Witness Statement. He averred that he had signed Leases for the Plots. There is no one in occupation of the Plots.
15. It was his evidence that the Defendants were falsely claiming ownership of his plots without any documents in support of their claims. He stated that he bought the plots from Embakasi Ranching Company Limited. He prays for the orders sought in their Plaint.

Court's directions

16. At close of the hearing, the court directed the Plaintiffs to file their written submissions.
The Plaintiffs complied by filing the submissions dated 14th March, 2024. The Court has had a chance to read the submissions and considered them.

Issues for determination

17. Having reviewed the pleadings, the evidence and the submissions the key issues for determination are;
 - a. Whether the Plaintiffs have satisfied the court as to their ownership of the Suit Properties.
 - b. Whether the Plaintiffs are entitled to the orders sought.

Analysis and determination

A. Whether the Plaintiffs have satisfied the court as to their ownership of the Suit Properties

18. The 2nd Plaintiff in his testimony before the court testified that he and the 1st Plaintiff have been members of the 1st Defendant Company which is a land buying company and whose members are entitled to own plots in the 1st Defendant's parcels of land as allocated. Each share in the 1st Defendant company is equal to one plot on identified land owned by the 1st Defendant. The 1st Defendant would also issue bonus plots to its membership according to the shareholding.
19. PW1 further testified that the 1st Defendant acquired the land known as Nairobi L.R No. 12979/2 at Ruai for purposes of distributing to its membership. PW1 Acquired two plots in the said land whereas the 1st Plaintiff acquired 24 plots as listed in the witness statement of the 2nd Plaintiff and in the Plaint. He exhibited the share certificates and plot ownership cards in support of the Plaintiffs' claim of ownership of the suit properties which was the document number 2 (PE2).
20. In 2017, the 1st Defendant made a resolution to process title deeds for its members including the Plaintiffs after the completion of the process of survey of the plots. The 2nd Defendant was to register the plots and issue titles as directed by the 1st Defendant. The Plaintiffs' plots were indeed allocated parcel numbers accordingly as Nairobi Block 136/ 6383, Nairobi Block 136/ 6395, Nairobi/ Block 136/ 6389, Nairobi Block 136/6078, Nairobi Block 136/ 6079, Nairobi Block 136/ 6398, Nairobi Block 136/ 6375, Nairobi Block 136/ 1754, Nairobi Block 136/ 6376, Nairobi Block 136/ 6379,



Nairobi Block 136/ 6378, Nairobi Block 136/ 6394, Nairobi Block 136/ 3627, Nairobi Block 136/ 3612, Nairobi Block 136/ 6388, Nairobi Block 136/ 3428, Nairobi Block 136/ 3429, Nairobi Block 136/ 1149, Nairobi Block 136/ 2179, Nairobi Block 136/ 1991, Nairobi Block 136/ 1992, Nairobi Block 136/ 3424, Nairobi Block 136/ 3425, Nairobi Block 136/ 3426 & Nairobi Block 136/ 3427.

21. The Plaintiffs however discovered that in the process of submitting the records to the 2nd Defendant, the Defendants conspired, altered, changed and manipulated the company's register, records and survey plans and allocated the Plaintiffs plots to themselves. The 2nd Defendant was in the process of issuing title deeds in respect of the Plaintiffs' plots to the Defendants who had fraudulently allocated them to themselves. The Plaintiffs position was that they owned the plots and the Defendants have no lawful claims over them.
22. As noted earlier on, 1st, 3rd and 4th Defendants filed statements of Defence denying the Plaintiffs' claim. At the hearing, they did not present evidence. The consequences of their failure to adduce evidence is that their pleadings remain mere statements of fact since in not adducing evidence, they failed to substantiate their pleadings. In the same vein the failure to adduce any evidence means that the evidence adduced by the Plaintiffs against them is uncontroverted and therefore unchallenged.
23. In the case of *Linus Nganga Kiongo & 3 Others v Town Council of Kikuyu* [2012] eKLR, Odunga, J as he then was) stated as follows on the consequences of failure by a party to call evidence:

“What are the consequences of a party failing to adduce evidence? In the case of *Motex Knitwear Limited v Gopitex Knitwear Mills Limited* Nairobi (Milimani) HCCC No. 834 of 2002 Justice Lesiit, citing the case of *Autar Singh Babra and Another v Raju Govindji*, HCCC No. 548 of 1998 stated:

“Although the Defendant has denied liability in an amended Defence and Counterclaim, no witness was called to give evidence on his behalf. That means that not only does the defence rendered by the 1st Plaintiff's case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail.”

24. In the case of *Trust Bank Limited v Paramount Universal Bank Limited & 2 Others* Nairobi (Milimani) HCCS No. 1243 of 2001, the Learned Judge citing the same decision stated that “it is trite that where a party fails to call evidence in support of its case, that party's pleadings remain mere statements of fact since in so doing the party fails to substantiate its pleadings. In the same vein the failure to adduce any evidence means that the evidence adduced by the Plaintiff against them is uncontroverted and therefore unchallenged.”
25. Consequently, the Plaintiffs' evidence in this case is uncontroverted and therefore unchallenged.
26. As explained in the case of *Palace Investment Ltd v Geoffrey Kariuki Mwenda & Another* (2015) eKLR, by the Court of Appeal the burden of proof in a civil case of this nature is on a balance of preponderance of probabilities. The court made reference to the holding by Denning J. in *Miller v Minister of Pensions* (1947) 2 ALL ER 372 where he stated as follows:

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it more probable than not; the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow.



A draw is not enough. So in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

27. Having considered the testimony of the Plaintiffs’ witness and the documentary evidence produced in support of the Plaintiffs’ case, I am persuaded that the Plaintiffs have established their case on a balance of probabilities.

B. Whether the Plaintiffs are entitled to the orders sought.

28. It follows therefore that the Plaintiffs having proved their case are entitled to the orders sought in their plaint.

29. Consequently, the court grants the Plaintiffs the orders prayed for including the costs of this suit against the Defendants jointly and severally as follows:

- a. A permanent injunction is issued in favour of the Plaintiffs restraining the Defendants either by themselves or through their agents, employees, servants and/or proxies from registering, transferring or in any other way taking or assuming possession and ownership of land parcels numbers Nairobi Block 136/6383, Nairobi Block 136/6395, Nairobi Block 136/6389, Nairobi Block 136/6078, Nairobi Block 136/6079, Nairobi Block 136/6398, Nairobi Block 136/6375, Nairobi Block 136/1754, Nairobi Block 136/6376, Nairobi Block 136/6379, Nairobi Block 136/1754, Nairobi Block 136/6376, Nairobi Block 136/6379, Nairobi Block 136/6378, Nairobi Block 136/6394, Nairobi Block 136/6327, Nairobi Block 136/6312, Nairobi Block 136/6388, Nairobi Block 136/6328, Nairobi Block 136/6329, Nairobi Block 136/1149, Nairobi Block 136/2179, Nairobi Block 136/1991, Nairobi Block 136/1992, Nairobi Block 136/3424, Nairobi Block 136/3425, Nairobi Block 136/3426 and Nairobi Block 136/3427 any other parcel which was originally plots numbers 6930, 6930B, 6929, 6929, 6291B, 7606, 7607, 1479, 1469, 1470, 1470B, 6078, 6978B, 6979, 6979B, 6980, 6981B, 6112, 6113, 6113B, V11006, V11007, V11008, V11009 and 1479B on Land Registration Number 12979/2.
- b. A declaration is hereby issued that land parcels numbers Nairobi Block 136/6383, Nairobi Block 136/6395, Nairobi Block 136/6389, Nairobi Block 136/6078, Nairobi Block 136/6079, Nairobi Block 136/6398, Nairobi Block 136/6375, Nairobi Block 136/1754, Nairobi Block 136/6376, Nairobi Block 136/6379, Nairobi Block 136/1754, Nairobi Block 136/6376, Nairobi Block 136/6379, Nairobi Block 136/6378, Nairobi Block 136/6394, Nairobi Block 136/6327, Nairobi Block 136/6312, Nairobi Block 136/6388, Nairobi Block 136/6328, Nairobi Block 136/6329, Nairobi Block 136/1149, Nairobi Block 136/2179, Nairobi Block 136/1991, Nairobi Block 136/1992, Nairobi Block 136/3424, Nairobi Block 136/3425, Nairobi Block 136/3426 and Nairobi Block 136/3427 any other parcel which was originally plots numbers 6930, 6930B, 6929, 6929, 6291B, 7606, 7607, 1479, 1469, 1470, 1470B, 6078, 6978B, 6979, 6979B, 6980, 6981B, 6112, 6113, 6113B, V11006, V11007, V11008, V11009 and 1479B on Land Registration Number 12979/2 belong to the Plaintiffs.
- c. An Order is hereby issued directing the Defendants to register and forward documents to Chief Land Registrar showing that the Plaintiffs are the owners of the said lands.
- d. An order is issued directing the 2nd Defendant to cancel all entries, information and registration which may show that land parcels of land known Nairobi Block 136/6383, Nairobi Block 136/6395, Nairobi Block 136/6389, Nairobi Block 136/6078, Nairobi Block 136/6079, Nairobi Block 136/6398, Nairobi Block 136/6375, Nairobi Block 136/1754,



Nairobi Block 136/6376, Nairobi Block 136/6379, Nairobi Block 136/1754, Nairobi Block 136/6376, Nairobi Block 136/6379, Nairobi Block 136/6378, Nairobi Block 136/6394, Nairobi Block 136/6327, Nairobi Block 136/6312, Nairobi Block 136/6388, Nairobi Block 136/6328, Nairobi Block 136/6329, Nairobi Block 136/1149, Nairobi Block 136/2179, Nairobi Block 136/1991, Nairobi Block 136/1992, Nairobi Block 136/3424, Nairobi Block 136/3425, Nairobi Block 136/3426 and Nairobi Block 136/3427 any other parcel which was originally plots numbers 6930, 6930B, 6929, 6929, 6291B, 7606, 7607, 1479, 1469,1470, 1470B, 6078, 6978B, 6979,6979B, 6980, 6981B, 6112, 6113, 6113B, V11006, V11007, V11008, V11009 and 1479B on Land Registration Number 12979/2 as belonging to persons other than the Plaintiffs as the owners of the said land and register the Plaintiffs as the owners of the said lands.

- e. The Plaintiffs are awarded the costs of this suit against the Defendants jointly and severally.

It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF APRIL, 2024.

M.D. MWANGI

JUDGE

In the virtual presence:

Mr. Kassimu h/b for B.M Musyoki for the Plaintiffs

N/A for the Defendants

Yvette: Court Assistant

M.D. MWANGI

JUDGE

