



**Karuta v Njeri & another (Environment & Land Case 1218 of 2016)  
[2024] KEELC 3774 (KLR) (22 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3774 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1218 OF 2016**

**OA ANGOTE, J  
APRIL 22, 2024**

**BETWEEN**

**PENINAH KARUTA ..... PLAINTIFF**

**AND**

**HANNAH NJERI ..... 1<sup>ST</sup> DEFENDANT**

**EMBAKASI RANCHING COMPANY LTD ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. Before the Court for determination is the Plaintiff's Amended Complaint dated 20<sup>th</sup> March 2020 and filed on 20<sup>th</sup> July 2020. The Plaintiff is seeking for the following orders:
  - a. A permanent injunction restraining the Defendants either by themselves or through their agents, servants, employees, proxies or anyone acting on their behalf from trespassing, entering, claiming, encroaching, working on, constructing on or in any other way interfering with the Plaintiff's quiet possession of all that piece of land known as Nairobi/Block 136/1086 (hereinafter 'the suit property').
  - b. The Defendants be ordered to remove any structure or materials they may have deposited or put up on the suit property failure to which they be forcefully evicted.
  - c. An order directing the Defendants to transfer, facilitate, cause and process transfer of the suit property to the Plaintiff within 90 days failure to which the Deputy Registrar of the Court do execute, sign and approve all the documents to transfer the suit property to the Plaintiff.
  - d. An order directing the Chief Lands Registrar to transfer the suit property to the Plaintiff.
  - e. Any other order that the Court deems fit and just to grant.



- f. The Defendants do pay costs of the suit.
2. The Plaintiff averred that she is the registered owner of the suit property which was previously known as plot number P. 6977 and was held within parcel number 12979/2 which was owned by the 2<sup>nd</sup> Defendant; that she was allotted the plot by the 2<sup>nd</sup> Defendant on 14-06-1994 and that having satisfied all the allotment conditions, she was issued with a Certificate of Ownership.
  3. The Plaintiff averred that she occupied the suit property without any interference until April 2016 when the 1<sup>st</sup> Defendant visited the suit property and demanded that his workers halt construction thereon and that the 1<sup>st</sup> Defendant disrupted the construction work that was going on on the suit property, threatened to pull down his house and fence and in September 2016 dug a pit latrine on the suit property.
  4. The Plaintiff averred that she sought clarification on the ownership of the suit property from the 2<sup>nd</sup> Defendant but the 2<sup>nd</sup> Defendant informed her that they should deal with the dispute amongst themselves and that when the 2<sup>nd</sup> Defendant's land was subdivided for purposes of distribution, the suit property was given parcel number Nairobi/Block 136/1086 and fraudulently registered in the 1<sup>st</sup> Defendant's name.
  5. The 2<sup>nd</sup> Defendant filed a Defence denying the Plaintiff's allegations. It was averred by the 2<sup>nd</sup> Defendant that the 1<sup>st</sup> Defendant is the rightful owner of the suit property having been allotted the same by the 2<sup>nd</sup> Defendant on 24<sup>th</sup> April 1991. Consequently, the 2<sup>nd</sup> Defendant stated that the Plaintiff was the trespasser on the 1<sup>st</sup> Defendant's land.
  6. The 1<sup>st</sup> Defendant did not file a Defence.

### **Hearing and Evidence**

7. During the hearing, John Nchoria Mutunga, testified as PW1. He stated that he had a Power of Attorney and was testifying on behalf of his wife (the Plaintiff) who was hospitalized in America.
8. It was the evidence of PW1 that a Share Certificate was issued to them by the 2<sup>nd</sup> Defendant; that although the number of the suit property was changed as reflected on the title, the suit property still belonged to the Plaintiff and that the prayers sought in the Plaint should be granted.
9. The Defendants did not participate in the hearing.

### **Submissions**

10. The Plaintiff's advocate submitted that the Plaintiff had proven that she is the owner of the suit property by producing the following allocation papers: receipt number 14095 dated 14<sup>th</sup> June 1994, share certificate number 404, receipt number 4976 dated 11<sup>th</sup> August 1995 and a beacon certificate number 3131 dated 12<sup>th</sup> October 1995.
11. It was the Plaintiff's advocate's submissions that these documents were issued by the 2<sup>nd</sup> Defendant and their authenticity have not been denied; that there was double allocation of the suit property with the Plaintiff's number being P6977 and M96B belonging to the 1<sup>st</sup> Defendant and that the Plaintiff's allocation should take precedence over that of the 1<sup>st</sup> Defendant. The case of *Republic v City Council of Nairobi & 3 Others* [2014] eKLR was relied upon.



12. On the issue of whether the 1<sup>st</sup> Defendant has trespassed on the Plaintiff's land, it was submitted that having proven that the Plaintiff was the rightful owner of the suit property, the 1<sup>st</sup> Defendant's actions of digging a pit latrine thereon amounted to trespass.
13. In conclusion the Plaintiff's advocate submitted that the Plaintiff should be awarded costs of the suit as costs follow the event.

### **Analysis and Determination**

14. The crux of the Plaintiff's case is that she is the rightful owner of the suit property and that the transfer of the suit property to the 1<sup>st</sup> Defendant was fraudulent and should therefore be cancelled.
15. Section 109 of the *Evidence Act* provides as follows:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
16. In the case of *Gichinga Kibutha v Caroline Nduku* [2018] eKLR the Court stated as follows:

“It is not automatic that in instances where the evidence is not controverted, the claimant's claim shall have his way in Court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest.”
17. Although the 1<sup>st</sup> Defendant did not file a Defence and both Defendants did not participate in the hearing, the Plaintiff still needed to prove her claim of ownership of the suit property on a balance of probabilities and her claim of fraud on a standard that is above a balance of probabilities but not beyond reasonable doubt.
18. Section 26 (1) of the *Land Registration Act* provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

  - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
  - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
19. The Plaintiff has not exhibited any Certificate of Title from which the Court can primarily infer that she is the owner of the suit property. She has instead stated that she was allotted the suit property by the 2<sup>nd</sup> Defendant. The Plaintiff produced in evidence the Share Certificates and receipts issued by the 2<sup>nd</sup> Defendant.



20. The Court in the case of *Beatrice Wambui Maina v Embakasi Ranching Company Ltd & another* [2022] eKLR stated as follows:

“The court is alive to the fact that there are circumstances where a property in dispute has no title. This does not however mean that no rights can accrue therefrom. In such circumstances the court will set out to establish whether the documentary evidence establishes an unbroken chain leading to the root of the title as persuasively stated by Onguto J in the case of *Caroline Awinja Ochieng & another v Jane Anne Mbithe Gitau & 2 others* [2015] eKLR;

“In determining the above issue it would perhaps be appropriate to first state that tracing ownership of unregistered land is dependent on tracing the root of title. Unlike registered land where ownership is domiciled and founded in the register of titles, ownership of unregistered land and the ascertainment or confirmation thereof involves the intricate journey of wading through documentary history ... It is the delivery of deeds or documents which assist in proving not only dominion of unregistered land but also ownership. The deeds must establish an unbroken chain that leads to a good root of title or title paramount. A good compilation of the documents or deeds relating to the property and concerning the claimant as well as any previous owners leading to the title certainly proves ownership. It is such documents which are basically

“the essential indicia of title to unregistered land:: per Nourse LJ in *Sen v Headley* [1991] Ch 425 at 437.

The documents in my view are limitless. It could be one, they could be several. They must however establish the claimant’s beneficial interest in the property. Examples of the deed or documents include, at least in the Kenyan context: sale agreements, Plot cards, Lease agreements, allotment letters, payment receipts for outgoing, confirmations by the title paramount, notices, et al.”

21. The Plaintiff has stated that the share certificates and receipts on record were issued by the 2<sup>nd</sup> Defendant who has not denied their authenticity. This would be prima facie evidence of the fact that the Plaintiff owns the stated shares and consequently owns the suit property.
22. The documentary evidence points to the fact that the shares that were issued to the Plaintiff were for plot number P.6977. The Plaintiff has claimed that plot number P.6977 is now known as Nairobi/Block 136/1086 (the suit property).
23. No evidence was called to rebut the Plaintiff’s evidence. Indeed, the 1<sup>st</sup> Defendant in whose name the title is registered neither filed a Defence nor testified in this matter.
24. Consequently, it is the finding of this court that the Plaintiff has proven on a balance of probabilities that she owns shares in the 2<sup>nd</sup> Defendant and the shares entitled her to a plot of land. That is the same land on which a title for Nairobi/Block 136/1086 was issued in the name of the 1<sup>st</sup> Defendant.
25. In view of the foregoing, I allow the Plaintiff’s claim as follows:
- a. A permanent injunction be and is hereby issued restraining the Defendants either by themselves or through their agents, servants, employees, proxies or anyone acting on their behalf from trespassing, entering, claiming, encroaching, working on, constructing on or in



any other way interfering with the Plaintiff's quiet possession of all that piece of land known as Nairobi/Block 136/1086.

- b. The Defendants are hereby ordered to remove any structure or materials they may have deposited or put up on piece of land known as Nairobi/Block 136/1086, failure to which they be forcefully evicted.
- c. An order directing the Defendants to transfer, facilitate, cause and process transfer of the suit property to the Plaintiff within 90 days, failure to which the Deputy Registrar of the Court do execute, sign and approve all the documents to transfer the suit property to the Plaintiff.
- d. An order directing the Chief Lands Registrar to transfer the suit property to the Plaintiff be and is hereby issued.
- e. The Defendants do pay costs of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 22<sup>ND</sup> DAY OF APRIL, 2024.**

**O. A. ANGOTE**

**JUDGE**

**In the presence of;**

Mr. B. M. Musyoki for Plaintiff

No appearance for Defendant

Court Assistant - Tracy

