



**Nguyo v Muthee & another (Environment & Land Case 493 of 2017)
[2024] KEELC 3295 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3295 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE 493 OF 2017**

**YM ANGIMA, J
APRIL 11, 2024**

BETWEEN

WILLIAM GATHECA NGUYO PLAINTIFF

AND

FRANCIS KARIUKI MUTHEE 1ST DEFENDANT

JOHN NJOROGE KAMAU 2ND DEFENDANT

JUDGMENT

A. Plaintiff’s Claim

1. By a plaint dated 28.09.2017 the Plaintiff sued the 1st and 2nd Defendants seeking the following reliefs;
 - a. A declaration that the registration of the 1st and/or 2nd Defendant’s name in the defunct Laikipia County Council Or The County Government Of Laikipia plots register is fraudulent, mistaken, illegal, irregular, null and void ab initio and the same be and is hereby revoked and/ or cancelled forthwith and in their place, the name of the Plaintiff be recorded or written forthwith by the County Secretary Of The County Government Of Laikipia.
 - b. An order that the 1st and the 2nd Defendants by themselves, their relatives, servants, employees, agents, assigns, or any persons claiming title or ownership either through, by or under them to deliver vacant, exclusive and unconditional possession of Plot No. C320 Sipili Trading Centre and demolish the perimeter fence erected thereon and remove all building materials deposited therein and in default they be forcefully evicted therefrom at their own cost.
 - c. A permanent injunction do issue restraining the 1st and 2nd Defendants by themselves, their relatives, servants, employees, agents, assigns, or any persons claiming title or ownership either through, by or under them from remaining on, trespassing into, re-entering, depositing materials, erecting structures, or in any other manner whatsoever, or howsoever interfering



with the Plaintiff's peaceful, quiet, use, enjoyment, occupation, possession and/or ownership of Plot No. C320 Sipili Trading Centre indefinitely.

- d. Costs of the suit plus interest thereon at court's rate.
 - e. Any other or further relief this court may deem just and fair to grant.
2. The Plaintiff pleaded that at all material times he was a purchaser for value of Plot No. C320 Sipili Trading Centre (the suit property) by virtue of having bought it from the original allottee one Ann W. Migwi. It was pleaded that in spite of the foregoing the 1st Defendant had through mistake, fraud, illegality, or irregularity obtained registration of the suit property in the plot register maintained by the defunct County Council of Laikipia (the council). The Plaintiff pleaded several particulars of fraud and mistake on the part of the Defendants and sought revocation or cancellation of the 1st Defendant's said registration as owner of the suit property.
 3. The Plaintiff further pleaded that sometime in 2016 the 2nd Defendant entered the suit property, fenced it off and deposited building materials and commenced construction thereon without any lawful justification or excuse. It was contended that despite demand and issuance of a notice of intention to sue, the Defendants had failed to make good the Plaintiff's claim hence the suit.

B. Defendants' Response

4. The Defendants filed a joint statement of defence dated 02.11.2017 denying liability for the Plaintiff's claim. They denied that the Plaintiff was the owner of the suit property and put him to strict proof thereof. They also denied that one, Ann. W. Migwi was the original allottee of the suit property and put the Plaintiff to strict proof thereof.
5. The Defendants denied any fraud, mistake, illegality or irregularity in the 1st Defendant's acquisition of the suit property. They denied all the particulars of such impropriety pleaded in the plaint and put the Plaintiff to strict proof thereof. The 1st Defendant pleaded that he lawfully acquired the suit property in 1985 from the defunct Council and that he has been paying land rates and rent as the legitimate allottee thereof.
6. The Defendants pleaded that the developments they were undertaking on the suit property were duly authorized by the relevant approving authorities hence the Plaintiff's consent for the construction was not required. The Defendants contended that the Plaintiff's claim was bad in law and time-barred under the *Limitation of Actions Act* (Cap.22). They consequently prayed for dismissal of the Plaintiff's suit with costs.

C. Plaintiff's Reply

7. The Plaintiff filed a reply to defence dated 14.11.2017 in response to the Defendants' defence. The Plaintiff joined issue upon the Defendants' defence and denied all the allegations therein and put the Defendants to strict proof thereof. The Plaintiff pleaded that the 1st Defendant's allocation was merely on a temporary basis and that he had failed to accept the offer and satisfy the conditions of allotment.
8. The Plaintiff denied that the 1st Defendant had been in possession of the suit property since 1985 and further denied that his claim was statute barred under the *Limitation of Actions Act* (Cap.22).

D. Trial Of The Action

9. At the trial hereof, the Plaintiff called 2 witnesses and closed his case. His evidence was to the effect that he purchased the suit property from the original allottee one, Ann Migwi who testified as PW2.



PW2 testified that she was allocated the suit property by the Council and paid Kshs.9,000/- for the allotment but she was not issued with a receipt. The record shows that the Plaintiff's efforts to summon the officials of the County Government of Laikipia to testify on his behalf became futile since they failed to attend court.

10. The 1st Defendant's evidence testified on his own behalf at the trial and he maintained that he was allocated the suit property by the Council way back in 1985 hence he was the original allottee thereof and not Ann Migwi as claimed by the Plaintiff. He testified that he took possession of the suit property upon allocation and fenced it.
11. The 2nd Defendant, on his part, stated that the suit property belonged to the 1st Defendant and that he had an agreement with him for him (the 2nd Defendant) to develop it so that they could share occupation of the units. He was clear that he was not claiming ownership of the suit property but his actions thereon were based solely on his agreement with the 1st Defendant.

E. Issues For Determination

12. It is evident from the material on record that the parties did not file an agreed statement of issues for determination. As a result, the court shall frame the issues for determination as provided for under Order 15 Rule 2 of the Civil Procedure Rules, 2010. Under the said rule, the court may frame issues from any of the following;
 - a. The allegations contained in the pleadings.
 - b. The allegations contained in sworn statements made by or on behalf of the parties.
 - c. The contents of documents produced by the parties.
13. The court has considered the pleadings, evidence and documents on record in this matter. The court is of the opinion that the following are the key issues which arise for determination herein;
 - a. Whether the Plaintiff has proved his claim against the Defendants to the required standard.
 - b. Whether the Plaintiff is entitled to the reliefs sought in the suit.
 - c. Who shall bear costs of the suit.

F. Analysis And Determination

Whether the Plaintiff has proved his claim against the Defendants to the required standard

14. The court has considered the material and submissions on record on this issue. It is evident that the Plaintiff's claim is hinged on the purchase of the suit property from one, Ann Migwi whom he considered to have been the original allottee by virtue of an allocation made to her in 2006. The court has perused the documents on record and finds no evidence of allocation of the suit property to Ann Migwi alias Ann Wanjiru. The copy of the letter of "confirmation" of allocation dated 13.06.2006 which was contained in the Plaintiff's bundle of documents were merely marked for identification and it was never produced at the trial.
15. The court has also noted that at the trial hereof, PW2 testified that although she paid Kshs.9,000/- to the Council for the allotment she was never issued with a payment receipt. This is quite strange given that the payment was being made to a public body. There was no explanation rendered by PW2 on why she did not insist on her payment being officially acknowledged through a receipt or why she never followed up the issue with the concerned authorities.



16. The court has further noted that there is no evidence on record to demonstrate that the suit property was ever transferred from PW2 to the Plaintiff at any given time. The computer generated invoices for rates produced at the trial bear the name of the 1st Defendant and there is also a letter dated 21.06.2018 from the National Land Commission indicating that the allottee of the suit property was the 1st Defendant.
17. In the premises, the court is not satisfied that the said Ann Migwi was the original allottee of the suit property capable of passing any legal or equitable interest therein to the Plaintiff or any other person. In so far as the Plaintiff's claim is predicated upon PW2's allotment, the same must fail since the Plaintiff was obliged to demonstrate such prior allotment which he has failed to do.
18. It is also evident from the pleadings and evidence on record that the Plaintiff's claim was also based upon alleged fraud, mistake, illegality or irregularity in the 1st Defendant's acquisition of the suit property. The basis of the Plaintiff's said allegations was that 1st Defendant was only registered as owner by the Council in 2009 whereas the allocation to Ann Migwi was made much earlier in 2006. The Plaintiff thus contended that the 1st Defendant must have acquired the suit property through forgery, corruption, misrepresentation.
19. As indicated before, there is no credible evidence before the court to demonstrate that the allocation to PW2 was earlier in time than the 1st Defendant's allocation. On the contrary, the communication by the National Land Commission indicates that the 1st Defendant's allocation was earlier in time having been made on 04.03.1985. As such, the court finds that the Plaintiff's generalized allegations of fraud, forgery, misrepresentation, illegality, mistake and irregularity have not been proved to the required standard or at all.

Whether the Plaintiff is entitled to the reliefs sought in the suit

20. The court has already found and held that the Plaintiff has failed to prove his claim against the Defendants to the required standard. He has failed to prove that the vendor who sold the suit property to him was the original allottee thereof. He has also failed to prove the allegations of fraud, mistake, forgery, illegality, misrepresentation, and irregularity against the 1st Defendant. It would, therefore, follow that the Plaintiff is not entitled to the reliefs sought in the suit, or any one of them.

Who shall bear costs of the suit

21. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason why the successful parties should not be awarded costs of the suit. Accordingly, the Defendants shall be awarded costs of the suit.

G. Conclusion And Disposal Order

22. The upshot of the foregoing is that the court finds and holds that the Plaintiff has failed to prove his claim against the Defendants on a balance of probabilities as required by law. As a consequence, the court makes the following orders for disposal of the suit;
 - a. The Plaintiff's suit against the Defendants be and hereby dismissed in its entirety.
 - b. The 1st and 2nd Defendants are hereby awarded costs of the suit.



It is so decided.

JUDGMENT DATED AND SIGNED AT NYAHURURU AND DELIVERED THIS 11TH DAY OF APRIL, 2024.

Y.M. ANGIMA

JUDGE

In the presence of:

Mr. Joel Sigilai for the Plaintiff

Ms. Wanjiru Muriithi for the 1st and 2nd Defendants

C/Asst: Vanessa

