



**Lukase & another v Njiru Mihang’o Farmers Housing Scheme & another (Environment & Land Case 1088 of 2016) [2024] KEELC 4299 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4299 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1088 OF 2016**

**JE OMANGE, J**

**MAY 9, 2024**

**BETWEEN**

**WYCLIFF LUKASE ..... 1<sup>ST</sup> PLAINTIFF**

**BETTY HABWE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**NJIRU MIHANG’O FARMERS HOUSING SCHEME ..... 1<sup>ST</sup> DEFENDANT**

**LIYO CHANDO ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs vide the plaint dated 7<sup>th</sup> September, 2016 prayed for the following orders;
  - a. A mandatory order restricting the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their agents and or servants from entering, trespassing, further dealings, development, registrations and or transfer of Plot No. 633 within Mihango area to any person, body and or any unsuspecting buyers,
  - b. An order directing the 1<sup>st</sup> and 2<sup>nd</sup> Defendant to issue title in favour of the Plaintiffs and or in the alternative, the Plaintiffs be refunded the purchase price at current market rates upon valuation.
  - c. Costs of the suit and interest at court rates.
2. The Plaintiffs aver that they purchased plot no. 633 from one Stephen Musila Kamulu on the 7<sup>th</sup> October, 2014 at an agreed price of Kshs 600,000. That they were issued with a Plot Certificate, whereupon they took legal possession of the suit property. That on the 3<sup>rd</sup> September, 2016 they were surprised to meet the 2<sup>nd</sup> Defendant within the premises claiming to have also purchased the land and developed it. The Plaintiffs aver that the 1<sup>st</sup> Defendant fraudulently sold the property to the 2<sup>nd</sup> Defendant in spite of being aware that the property had been sold to them.



3. The 1<sup>st</sup> Defendant on their part denied that they ever sold the land to the Plaintiffs. They denied that they were a party to the agreements between the Plaintiffs and Stephen Musila Kamulu who the Plaintiffs allege sold them land.
4. The 2<sup>nd</sup> Defendant denied the averments by the Plaintiffs and insisted that he purchased the suit property when it was vacant and undeveloped. He has constructed a property worth millions on the property upon which he resides with his family.
5. The 2<sup>nd</sup> Plaintiff told the court that she and her husband purchased the suit property from one Stephen Musila Kamulu and was given a certificate and receipt by the 1<sup>st</sup> Defendant. It was her evidence that they had sued the 1<sup>st</sup> Defendant as they had purchased the property in their scheme. She testified that when they purchased the suit property it had a foundation. Later, she found that the 2<sup>nd</sup> Defendant had occupied the land and was constructing. She filed a case in court and obtained an injunction.
6. Upon cross examination by Counsel for the 2<sup>nd</sup> Defendant she told the court that she was dealing with one Awiti from the 2<sup>nd</sup> Defendant and one Abdallah.
7. The 1<sup>st</sup> Defendant called a witness Morris Odhiambo who told the court that the suit property belonged to Maina Kinyua and hence the 1<sup>st</sup> Defendant could not sell it. He confirmed that they gave the 2<sup>nd</sup> Plaintiff a certificate when she showed them the agreement between her and the seller.

Upon cross examination, he told the court the 2<sup>nd</sup> Plaintiff and three others called him and told him they wanted to transfer a plot belonging to one Maina Kinyua. He issued the documents to the 2<sup>nd</sup> Plaintiff. He told the court that Stephen Musila was an agent of Maina Kinyua who was a former official of the 1<sup>st</sup> Defendant.

8. The 2<sup>nd</sup> Defendant on his part told the court that he purchased his plot from the office of the 1<sup>st</sup> Defendant where he paid Kshs 1 million. He did not produce a receipt to confirm this payment. DW2 was called by the 2<sup>nd</sup> Defendant to confirm that the 2<sup>nd</sup> Defendant started construction on the suit property in 2012 and had been resident on the suit property ever since.
9. All the parties filed submissions which the court has considered. The issues for determination are; Whether the Plaintiffs are the owners of Plot 663 within Mihango area and should be issued with a title Whether the Plaintiffs should be refunded the purchase price for the suit property
10. The Plaintiff case is premised on a sale agreement between Stephen Kamulu on one hand and Wycliffe Lukase and Betty Habwe as purchasers. The agreement indicates that Plot 633 was sold by the said Stephen Kamulu to the Plaintiffs at a consideration of Kshs 600,000. A plot certificate dated 7<sup>th</sup> October, 2014 bears the names of the Plaintiffs. The Plaintiffs also produced ballot number 2534 for plot 633 in the name of Stephen Musila Kamulu and another ballot number 756 for plot 633 in the name of the Plaintiffs. On the basis of the stamped ballot and plot certificate the Plaintiffs claim title for the suit property or refund of the Kshs. 600,000 they paid for the suit property and the Ksh. 35,000 for the building plans.
11. On the other hand, the 1<sup>st</sup> Defendants case is that they were not involved in the transaction between the Plaintiffs and the said Stephen Musila Kamulu. The 1<sup>st</sup> Defendant through the statement of Maurice Odhiambo Owiti confirm that the parcel of land was one of many which belonged to it. However, the said plot was owned by the former Chairperson of the 1<sup>st</sup> Defendant Maina Kinywa who had shares.
12. The 2<sup>nd</sup> Defendant produced a plot certificate in respect of plot 385 and a ballot number 533. He averred that he bought the plot from the office of the 1<sup>st</sup> Defendant, took possession and started construction.



13. From the outset it is clear that only the Plaintiffs sought orders from the court. The other parties did not present any claim before the court. As such the burden was on the Plaintiffs to prove their case on a balance of probability.
14. In order to prove the first issue, the Plaintiffs needed to establish that they are the valid owners of Plot 633 and hence should be issued with a title. The Plaintiffs have produced an agreement in the name of Stephen Musila Kamulu. This Stephen Musila was not called as a witness and was also not brought in as party. The Plot that he sold to the Plaintiffs was confirmed by the 1<sup>st</sup> Defendant through DW1 to belong to Maina Kinyua. It is not clear how the share certificate ended up in the name of Stephen Musila. The Plaintiffs also needed to establish a connection between the plot occupied by the 2<sup>nd</sup> Defendant and the plot sold to them. It is not clear that plot 385 which the 2<sup>nd</sup> Defendant occupies and Plot 633 which the Plaintiffs claim are one and the same. Indeed, the 2<sup>nd</sup> Plaintiff told the court that when she was shown the land it had a foundation but the 2<sup>nd</sup> Defendant produced photos that showed that when he bought the property it was vacant and had only grass. It is also noted that the 2<sup>nd</sup> Defendant called a witness who testified that he had been on the suit property since 2012 which is two years before the period that the Plaintiff claims to have bought it. On the other hand, the Plaintiffs failed to call vendor who could have shed light on the purchase and the location of the property.
15. The onus was on the Plaintiff to establish that through a valid sale agreement she acquired plot 633 which the 1<sup>st</sup> Defendant had then allocated illegally to the 2<sup>nd</sup> Defendant. In view of the failure to establish the connection between the plot she claims and the 2<sup>nd</sup> Defendant I find that the Plaintiffs have not proved their allegation that they were fraudulently divested of their plot by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.
16. Regarding the refund, this could only have been sought from a party with whom the contract was made. This party was not sued neither was he called as a witness.
17. The upshot of the foregoing is that the Plaintiff have not proved their case on a balance of probability. The suit is dismissed with costs.

**JUDGEMENT SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS ON 9<sup>TH</sup> MAY, 2024.**

**JUDY OMANGE**

**JUDGE**

In the Presence of;

-Mr. Njuguna holding brief for Omondi for 1<sup>st</sup> Defendant

- Mr. Kalama for Wanjiku for Plaintiff

-Mr. Makori for 2<sup>nd</sup> Defendant

-Court Clerk: Steve

