



Drywood Hotel Limited & another v Ngari & 18 others (Environment and Land Case Civil Suit E206 of 2021) [2024] KEELC 5659 (KLR) (18 July 2024) (Judgment)

Neutral citation: [2024] KEELC 5659 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E206 OF 2021
LN MBUGUA, J
JULY 18, 2024**

BETWEEN

DRYWOOD HOTEL LIMITED 1ST PLAINTIFF

KANYAKI HOLDINGS LIMITED 2ND PLAINTIFF

AND

SILAS NGARI 1ST DEFENDANT

DANIEL MGALU 2ND DEFENDANT

JAMES KINYANJUI NJENGA 3RD DEFENDANT

OKIAMBA BONIFACE 4TH DEFENDANT

DANIEL CHEGE 5TH DEFENDANT

VICTORIA KYAKA 6TH DEFENDANT

LUCY NGUGI 7TH DEFENDANT

SIMON MAYA 8TH DEFENDANT

GERALD CHIRA 9TH DEFENDANT

GRACE MBUGUA 10TH DEFENDANT

TABITHA MUKEKU 11TH DEFENDANT

NJENGA KANYONI 12TH DEFENDANT

RACHAEL NJOKI 13TH DEFENDANT

SIMON KIMANI 14TH DEFENDANT

SOPHIA FELISA MUKAMI 15TH DEFENDANT

JOHN MWANGI 16TH DEFENDANT



SAMUEL MUGURO 17TH DEFENDANT
JOHN LUCIMBA ELIAS BIWOTT 18TH DEFENDANT
JOSHUA MUNYWOKI 19TH DEFENDANT

JUDGMENT

1. The Plaintiffs commenced this suit by a plaint dated 31.5. 2021. They contend that the 1st Plaintiff is the registered proprietor of Nairobi /Block 97/2362 and Nairobi/Block 97/2430 while the 2nd Plaintiff is registered to Nairobi /Block 97/2429 by virtue of allotment by the Commissioner of lands.
2. It is their case that sometime in September 2001, Mukuru residents began encroaching onto the 1st Plaintiff's properties claiming ownership and that the said encroachment has now spread onto the 2nd Plaintiff's property.
3. They contend that the trespassers are now engaged in unlawfully renting out the suit properties and dumping soil and waste thereon, thus denying the Plaintiffs the economic use of the suit properties which are commercial in nature.
4. They pray that judgement be entered against the Defendants for;
 - a. A declaration that the 1st Plaintiff is the duly registered proprietor of the parcels of land known as Nairobi/Block 97/2362 and Nairobi /Block 97/2430.
 - b. A declaration that the 2nd Plaintiff is the duly registered proprietor of the parcel of land known as Nairobi/Block 97/2429.
 - c. A permanent injunction restraining the Defendant (s) acting by themselves, individually or jointly or through their servants, agents or employees or anybody claiming any right or interest through them from selling, transferring or building any structure or house on the said parcels known as Nairobi/Block 97/2362, Nairobi /Block 97/2430 and Nairobi/Block 97/2429.
 - d. An order that the Defendants and all other encroaching individuals on the Plaintiffs' properties known as Nairobi/Block 97/2362, Nairobi /Block 97/2430 and Nairobi/Block 97/2429 quit, move out and vacate the Plaintiffs' said parcels of land known as Nairobi/Block 97/2362, Nairobi /Block 97/2430 and Nairobi/Block 97/2429.
 - e. An order for the Defendants to pull out, demolish and remove all the illegal temporary structures erected by them on the property.
 - f. Orders that should the Defendants fail to comply with any orders given herein within 30 days, the District Commissioner Embakasi and the office Commanding Police Station, Embakasi, be required to move to enforce the orders of this Honourable Court and forcibly evict the Defendants and all other illegally encroaching residents from the Plaintiffs' properties.
 - g. Costs of the suit.
5. The Defendants were served with summons to enter appearance through substituted service as per the Affidavit of service sworn on 26.9.2023 by James Kinyanjui Mwaura, an authorized court process server, they failed to enter appearance or participate in the suit. Thus the hearing proceeded as a formal proof.



6. The Plaintiffs called 1 witness, PW1 who was John Karume Kiguru, one of the directors of both the 1st and the 2nd Plaintiffs. He adopted his witness statement dated 31.5.2021 as his evidence. He produced 14 documents contained in the Plaintiffs' bundle of documents as P. Exhibit 1-14.
7. His testimony is that in 1998, the 1st Plaintiff applied for and was allocated a commercial Plot K by the Commissioner of lands vide a letter of allotment dated 16.12.1998. That upon payment of the stand premium and other requirements, the 1st Plaintiff was registered as lessee for 99 years from 1.1.1999 of the said parcel now known as Title No. Nairobi/Block 97/2430.
8. That in a similar fashion, the 2nd Plaintiff which has changed its name thrice, finally reverting to its original name herein as at the date of incorporation was allocated a plot christened "Unsurveyed Commercial Site A" vide an allotment letter dated 9.3.1999 and the plot was registered as Title No. Nairobi /Block 97/2429 to the 2nd Plaintiff.
9. He avers that despite Title No. Nairobi/Block 97/2430 and Title No. Nairobi /Block 97/2429 being chronological, they were not adjacent to each other, thus the 1st Plaintiff sought to acquire an adjacent property in order to have more room for its intended hotel construction.
10. Subsequently, the 1st Plaintiff wrote to the Commissioner of Lands and applied for Plot No. 97/2362 which had been lying idle. He avers that its request was accepted by the Commissioner of Lands and the 1st Plaintiff was issued with a letter of allotment dated 27.2.2001 over "unsurveyed residential Plot No. 5" which bordered Title No. Nairobi/Block 97/2430 and which is now Title No. Nairobi /Block 97/2362.
11. The said allocation was on the basis that the said plot had been initially allotted to one David Sandagi Amiani, but the allotment had been cancelled because the said Mr. Sandagi had never paid the stand premium.
12. That after acquiring the aforementioned suit parcels, the 1st Plaintiff took steps to begin construction of its hotel and restaurant and pursuant thereto, it did construct site offices on its 2 plots. It also applied to the City Council of Nairobi for water supply connection and dug trenches in which the piping for water was to be laid.
13. That in September 2021, unidentified residents of the Mukuru informal settlement began encroachment on the 1st Plaintiffs parcel, whereby the 1st Plaintiff reported the encroachment to the chief who in turn instructed the residents to desist from such encroachment, but they defied him prompting the 1st Plaintiff to write to the Provincial Commissioner of Nairobi requesting for assistance in peaceably removing the encroaching residents from its property.
14. That following the said letter, the trespassers were removed by the Chief in consultation with the Embakasi District Officer. However, in the year 2003, another group resurged prompting the 1st Plaintiff to seek protection from the chief and the District officer, following which he was given 5 armed police officers, but the group violently threatened them prompting them to withdraw to prevent any bloodshed.
15. That after withdrawing, the 1st Plaintiff through its letter dated 22.4.2003 sought intervention from the provincial commissioner. That later, the Late Hon. David Mwenje who was the then member of Parliament for Embakasi Constituency tried to resolve the matter but failed. That at the time, it emerged that the encroachers were being incited and led by one Rael Njoki Wainaina also known as 'Mama Kanyoni' who was claiming ownership of the properties.



16. That the police also got involved and after investigations, Ms. Rael Njoki's granddaughter by the name Rachel Njoki together with her late daughter Elishiba Karwete Macharia were charged with forcible detainer in Criminal Case CF 9032/04 and CF3259/04 respectively, but plaintiffs are not certain as to what happened to the said criminal cases.
17. He avers that at one point, he was ambushed and threatened while on the suit property by a gang who proclaimed to be members of the infamous Mungiki gang.
18. He states that the Defendants or some of the people who have been collecting rent every month from temporary houses erected on the suit properties and which are depicted in the annexed photographs.
19. That since the plaintiffs have been deprived of reasonable use of the suit properties, they have not paid land rates and rent, but they fully intend to settle such dues once they get back the use of their suit properties.
20. PW1 also states that the Plaintiffs have issued notices for the trespassers to vacate the suit premises and even put up adverts to that effect in the Standard Newspaper of 27.10.2020 and in the Nation newspaper of 29.10.2020, but the encroachers have stayed put.
21. The Plaintiffs filed submissions dated 21.6.2024 where they urge the court to protect their right to property as enshrined under Article 40 of the *Constitution*. They contend that they have complied with Section 152E of the *Land Act* by notifying encroachers on its land to vacate, as their encroachment and illegal trespass offends the provisions of Section 152 of the *Land Act*.
22. The Plaintiffs rely on the case of *Ringera v Muhindi* (Environment and Land Miscellaneous Application E128 of 2021) KEELC 2481(KLR) (7 July 2022) (Judgment) as well as the case of *Salome Naliaka Wabwile v Alfred Okumu Musinaka* [2022] eKLR.

Determination

23. The evidence presented by the plaintiffs clearly demonstrates that the suit parcels belong to them. To this end, the plaintiffs have given a cogent account of their acquisition and ownership of the suit parcels. That the Plot K was allotted to the 1st Plaintiff by the Commissioner of lands vide a letter of allotment dated 16.12.1998 resulting in Title No. Nairobi/Block 97/2430. The 1st Plaintiff was also allocated Plot No.5” which is now Title No. Nairobi /Block 97/2362. The 2nd Plaintiff was also allocated a plot vide an allotment letter dated 9.3.1999 and which is now registered as Title No. Nairobi /Block 97/2429.
24. The aforementioned evidence was not challenged.
25. The evidence presented also points to a situation where the Plaintiffs have never known peace as the invaders on the suit parcels have been violent and resurge each time they are asked to leave the suit properties. Correspondences presented show that the police, provincial administration and even politicians were unable to unlock the impasse.
26. The foregoing situation is a rather common phenomenon in some urban areas of the country. In the case of *Unity 45 Housing Co-operative Society Limited v Kamuyu & 3 others (As Chairman, Secretary, Treasurer & Patron of Maili Saba Mwingenye Youth Self Help Group); Awuor Suing on Behalf of Dorice*



Auma Owuor & 2 others (Interested Parties) (Environment & Land Case 994 of 2014) [2024] KEELC 4972 (KLR) (24 June 2024) (Ruling), I stated as follows in relation to invasion of property;

“What I discern particularly from the litigation history is that the occupation of the suit land by the defendants and the Interested Parties was through sheer brute force, what can be termed as a brazen invasion with not the slightest semblance of innocence.”

27. Perhaps one of the most classic case touching on land invasions relate to litigation involving Orbit chemicals Ltd in Mukuru kwa Njenga area where the Standard Newspaper of 4.9.2023 ran on article titled; “After 36 years, court finds Mukuru kwa Njenga land belongs to Orbit, reporting that; the case which had been in court for 36 years remains a sore thumb that refuses to go for orbit despite several verdicts that the firm is the legal owner of the property in dispute... it has been case after case, judgment after judgment all in favour of orbit...”.

28. In one of such cases that is *Kiarie & 4 others v Orbit Chemicals Industries Limited & 4 others (Environment & Land Case E048 of 2023)* [2023]KEELC19340 (KLR) (15 August 2023) (Ruling), Wabwoto J gave a litigation chronology of what Orbit chemicals as the proprietors of land had gone through due to invasions;

“In the instant suit, the 1st Defendant (read orbit chemicals) has outlined the previous cases where the issue of ownership of the suit properties was litigated and the courts subsequently conferred the 1st Defendant as the registered owner in respect to the same. In *Petition No. 62 of 2018 Mukuru Kwa Njenga Slum Residents & 12 Others (2020) eKLR*, the ELC Court upheld the 1st Defendant’s proprietary rights and interests over the suit properties. In J.R Misc Application No. 748 of 1996 (*Amina Mohamed & 7 Others vs Chief Embakasi location & 2 Others*) (2005) eKLR, the High Court upheld the 1st Defendant’s proprietary rights and interests over the suit property and ordered the evictions of all squatters therein and HCCC No. 876 of 2004 (*Orbit Chemical Limited vs The Hon. Attorney General*), the 1st Defendant’s ownership of the suit property was also upheld and equally in *Zipporah Muthoni Ndungu & 5 Others vs National Bank of Kenya Ltd & 12 Others [2021]* the ELC confirmed the 1st Defendant’s ownership of the suit properties and held that the Applicants therein had no prima facie case as against the 1st Defendant”.

29. The current suit is certainly a re-play of the aforementioned cases on matters “invasion of property.”

30. In a bid to evict the Defendants, the Plaintiffs issued them with a Notice to vacate dated 19.10.2020. The said Notice was also published in the Daily Nation Newspaper of 29.10.2020 and the Standard Newspaper of 4.11.2020. The Plaintiffs also led unchallenged evidence that they posted the said Notices in visible areas throughout the said parcels. In essence, the said notices were served in line with Section 152E of the *Land Act*.

31. In *Atik Mohamed Omar Atik & 3 others v Joseph Katana & Another* [2019] eKLR, the court held that;

“In this regard, the first step in an eviction is for the lawful owner to serve a notice of eviction in accordance with the law. The essence of serving an adequate and reasonable eviction notice lies in the need to give the persons affected an opportunity to seek relief in court. Under Section 152E of the *land Act*, any person or persons served with such notice may apply to court for relief against the notice.”

32. The Defendants were served with a lawful notice to vacate the suit land over 3 years ago. They have not challenged the notice, yet they continue to occupy the suit land. There is no basis in law as to why the



Defendants should continue invading private property. In the circumstances, I find that the plaintiffs have proved their case on a balance of probabilities, hence their claim is allowed as per their plaint.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mbogeri for Plaintiffs

Court assistant: Eddel

