



**Gitau v Nyandegé & another (Environment & Land Case E164 of 2020)
[2024] KEELC 7255 (KLR) (24 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7255 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E164 OF 2020
AA OMOLLO, J
OCTOBER 24, 2024**

BETWEEN

ALICE WAMBUI GITAU PLAINTIFF

AND

CHARLES OUMA NYANDEGE 1ST DEFENDANT

JIMMY MATIKO 2ND DEFENDANT

JUDGMENT

1. Vide a plaint dated 2nd October 2020, Ms Alice Wambui Gitau pleaded that she is an original member of Embakasi Ranching Company Ltd and was allotted the subject property as P. 2839 and P2840 in the share certificates and now known as L.R Nairobi Block 105/5616 and 5617 respectively. She pleaded to have been in physical possession since then to date. The plaintiff continued that she was issued with titles for the two plots in September 2020.
2. After the receipt of titles, the plaintiff visited the suit premises and noticed it was occupied by someone who had erected a permanent structure on one plot and deposited building materials on the other. She avers to carrying out investigations which revealed the two defendants were the ones occupying both plots. It is her case that the Defendants are trespassing on her plots. That despite demand being issued to the Defendants they have failed to comply.
3. The plaintiff seeks the court's to be granted the following reliefs;
 1. An order directing the defendants to remove the structures erected on the suit plots and in default eviction do issue against the Defendants.
 2. Mesne profits
 3. Permanent injunction restraining the Defendants their agents, servants, children or any other person under their instructions, consent, authority and control from constructing structures



on, cultivating, and or from, entering, remaining on, trespassing or in any manner whatsoever from dealing with or interfering with any portion of parcel of land number L.R Nairobi Block 105/5616 and 105/5617.

4. Cost of the suit interest thereon.
5. Any other relief.
4. The 1st Defendant filed a statement of defence and Counter-claim dated 18th October, 2021 denying the plaintiff's claim in toto. The 1st Defendant denied that the plaintiff is regularly and lawfully registered as owner of the suit plots NAIROBI BLOCK 105/5616 and 5617. The 1st Defendant pleaded that the mere membership of the plaintiff in Embakasi Ranching Ltd cannot confer upon her rights over the suit plots which were not issued to her but were fraudulently swapped during registration process.
5. The 1st Defendant asserted that he has been in physical possession of the plots for a considerable period of time. That the plaintiff only conducted investigations after fraudulently procuring registration in her favour which clearly demonstrate her lack of interest in the suit plots. The 1st Defendant urged the court to dismiss the suit with costs.
6. In the counter-claim the 1st defendant (now plaintiff) pleaded that Embakasi Ranching Company Ltd sued as the 2nd defendant (in the counter-claim) had in 2006 put up several plots for sale to the general public. That he purchased 2 plots from the 2nd Defendant (in the Counter-claim) for Kshs.32000 each. That he (the 1st Defendant) immediately took possession and developed both plots by erecting a wall, planting flowers and building residential houses therein.
7. The 1st Defendant pleaded that he has had uninterrupted occupation of the two plots obtained all the utilities supplied thereto and in 2016 buried his son there. He accuses the plaintiff of obtaining title to the suit plots through fraud. The 1st defendant set out the particulars of fraud as follows;
 - a. Purporting to have registered her name in parcels of Land Number 105/5616 and 105/5617 without the basic supporting, documents duly prepared and forwarded.
 - b. Making and/or falsifying the primary documents necessary to be registered as the proprietor of the leasehold interest when the same could not have been regularly and lawfully prepared and forwarded to the Lands Department by the 2nd Defendant lawfully authorized officers.
 - c. Fraudulently transferring entries which were for the bonus Block to Block 105 which was not for bonus issues.
 - d. 1st Defendant misrepresenting herself as having purchased the suit parcels of when she had not purchased the same and using her membership certificate to snoop numbers for the suit properties.
 - e. Taking advantage of the Presidential decree on registration and issuance of titles to legitimate purchasers for value and having herself registered as a proprietor without even the requisite Registry Index Map (RIM)
 - f. Proceeding to irregularly, unlawfully and fraudulently have 1st Defendant's name being removed from the Register.
 - g. Colluding jointly to deprive the Plaintiff of his plots by refusing and/or failing to forward the plaintiff documents to the Lands Office.
8. The 1st Defendant (now plaintiff in the Counter-claim prays for judgment as stated hereunder;



- a. A permanent injunction restraining the 1st Defendant in the Counter-claim by herself, her agents, servants or employees from trespassing upon evicting from or interfering with the plaintiff's possession and quiet enjoyment of the suit properties.
 - b. A declaration that the transfer and/or registration of the 1st Defendant as the registered proprietor of L.R Nairobi Block 105/5616 and 105/5617 were irregular, unlawful and fraudulent and therefore null and void ab-initio.
 - c. An order for the cancellation and rectification of the Register to remove the name of the 1st Defendant and the said titles to be transferred and registered in favour of the plaintiff in the Counter-claim.
 - d. Special damages – (to be particularized)
 - e. General damages
 - f. Costs and interest.
9. Each party relied on the evidence of one witness. The plaintiff adopted her written witness statement dated 2nd October, 2020 filed in Court. She stated that she was allocated the two plots by Embakasi Ranching Ltd and she produced a copy of the share certificate to support this evidence. Ms Wambui stated that she complied with the terms of the allotment by making the requisite payments and produced copies of receipts issued to her.
 10. It is her further evidence that the company even issued her with beacon certificates for the plots. That she was shown the property in 2018 and at that time, there was no structures in the suit premises save for the construction materials which she believed belonged to neighbours of the adjacent plots using it as a holding place.
 11. PW added that earlier in September, 2020, she was issued with title documents for both plots to end the long journey of her acquisition of the property. It is after she acquired the title that she found there was a permanent structure built on LR. 5617 occupied by 2nd Defendant while on 5616 there were building materials deposited in readiness for construction and which plot is occupied by the 1st Defendant. She produced photos showing status of the two plots. She averred that the Defendants are trying to grab her plots and urged the court to grant her prayers as sought in the plaint.
 12. In her oral testimony, PW said she was issued with share certificates in 1985 and letter of allotment in 1990 for plots numbered 2839 and 2848. That she was shown the plots in 1990 and paid the survey fee. The witness continued to state that following presidential directive for issuances of titles made in 2018, she visited the offices of Embakasi Ranching Ltd for verification of her documents. After this process, she was issued with a title for the two plots and produced the documents filed in support of her case.
 13. On cross-examination, PW said she was buying two plots although she also paid for bonus plots. She denied that P.2839 and 2840 represented the plot numbers assigned to her. The witness admitted that these numbers appeared in the share certificates with P meaning plot and B for bonus. She could not remember the year the plot numbers were added in hand on the share certificate.
 14. She denied that as at 10th August, 1991 when she was allocated P.2839 and 2840, there was no land. She did not know about the L.R. number 10905/2 stated in her allotment letter and insisted that her plots are on block 105. She admitted that she did not have a title to her plots as at 2018. That by this time when she asked Embakasi Ranching about the structures on the suit plot, she was assured she was the original allottee.



15. The 1st Defendant Charles Ouma Nyadenge gave his testimony on the same date of 22nd April, 2024. He stated that the 2nd Defendant is his son in-law who stays on L.R No. 5616. The witness adopted his witness statement dated 27th October, 2023 and produced the 11 documents contained in the list dated 27/10/2023 as defendant's exhibits.
16. The Defendant continued to state that he started occupying the suit plot 5617 since 2007 to date. That on it, he has put up 4 bed roomed bungalow; children's 2 bed roomed house a dog house and a store. That he has also constructed a block wall around it. On 5616, he has developed 2 units of 3 & 2 bed roomed houses and it is also fenced. He asserted that he lived in peace until September, 2019 when he received the demand letter from the Plaintiff's advocate.
17. DW avers that he was given the survey map (Dex 1) in 2006 when he was being shown the plot. That the plots numbers given were identified as V.6018 and 6019 before the survey was done and the land was vacant when he was shown. He produced searches he conducted in 2007 and 2010 which he said did not return the name of the plaintiff as owner of the suit plots. The searches according to him, confirmed the suit plot numbers were already in existence.
18. DW said he made payments for site visit and for processing of title. He produced as D ex 7 a burial permit for his son who he stated was buried on one of the suit plots. That after the presidential decree, he asked Embakasi Ranching Co. Ltd for his titles but was told there was a dispute over the plots which had to be resolved first before they could issue him with a title.
19. Under cross-examination, DW said that he was only given a share certificate after he paid. That he did a site visit in December, 2006. He confirmed receipt of the demand letter served on him by the plaintiff's counsel. He also asserted the suit plot numbers were in existence before he purchased and identified as plots V.6018 and V6019. The witness confirmed the property rates requests did not bear his name and he did not produce bankers cheque confirmed he has paid the rates.
20. In re-examination, DW said the nos 5616 and 5617 were in existence when he was purchasing and they corresponded with the map given to him as well as the plots shown during the physical visit. That he made rates payments but the plots were still bearing the names of Embakasi Ranching Ltd. That he followed up on his title and each time he was told the problem of obtaining titles was with Ministry of Lands. This ended the hearing of the case.

Analysis and Determination:

21. The advocates filed written submissions which I have read. From the pleadings and evidence adduced both parties are claiming the plots located on the same geographical position and numbered as L.R NBI/BLOCK 105/5616 and 5617. Hence the question for determination is who between the plaintiff and the 1st Defendant is legally entitled to the suit plots.
22. In endeavouring to prove her ownership of the two plots, the plaintiff produced 17 documents presented in the list dated 16/11/2024. Documents 1 – 4 are leases and titles issued in favour of the plaintiff all dated March, 2019. P ex 5 is a share certificate issued to the plaintiff on 17th May, 1985. The witness admitted that at the time the share certificate was issued, it did not have plot numbers and she could not remember the year the plot nos P.2839 and 2840 were inserted on the said share certificate.



23. Probably the numbers were inserted post 1990 going by the evidence shown in the documents P.ex 6 & 7 referred to as allotment letter issued by Embakasi Ranching Ltd. P.ex 7 was a letter dated 6th November, 1990 and it is referenced as hereunder;

“Provisional letter of allocation of plot in the company’s land situated in the farm, off Komarock Road, covering L.R 10904/2 for approximately 2,024 hectares, leasehold.”

24. On this letter, it has the P. No. 2839 and 2840 added in hand under the reference of the letter. There is also a document at page 21 & 22 of the list from Embakasi Ranching Ltd. dated 21st March, 2018 which refers to received documents for processing bonus plot. It mentions the plaintiff’s share certificate No. 10066 and allotment letter 2899; engineering receipt 4938; survey receipt No. 10617 and bonus plot 015950 and 047446.

25. At page 23 is a receipt dated 6th November, 1990 (P ex 10) issued to the plaintiff for payment of survey fees of Kshs.1000 for P. 2839 B and 2840 B. Pages 25 (Pex 9) is a receipt for payment of engineering fees for P.2839 & 2840 for the sum of Kshs.7,000. There is also a payment by the plaintiff for Kshs.52,000 made on 8th May, 2007 titled bonus fee and beacon certificate for P.2839 and 2840.

26. The plaintiff also produced a receipt dated 15th March, 2018 for Kshs.20,000 charged for site visit relating to P. 2839 and 2840. There is a handwritten note produced as Pex 11(b) (page 29) signed on 20th March, 2018 stating;

Map 9

Plot P.2839 – 105/5616

– 105/5617

signed

Site confirmation for title

27. The plaintiff does not indicate who signed this hand-written document dated 20th March, 2018. From the Plaintiff’s documents produced, it is the only document linking the previous documents referred to the numbering of plot 5616 and 5617. The plaintiff has also produced an excerpt of a map with a numbering of 2839 and 2840 marked out but did not adduce evidence to link it with Pex 14 which is the official map from survey of Kenya. This excerpt of a map found at page 33 compared with Pex 14; on their faces show the position of 2839 and 2840 are in the same position as plot numbers 5616 and 5617 (as both maps show a big land adjacent and a road)

28. From the allotment letter which I mentioned earlier, the plots D. 2839 and 2840 was to be curved out of L.R No. 10904/2. The plaintiff said she does not know anything about this number because as far as she was concerned, her plots were in block 105. From the map 9 (P ex 14), it shows the same was received on 10th August, 1994 and authenticated on 31st August, 1994. The map includes the numbering 5616 and 5617 in block 105. It does not however indicate the land that was being subdivided. It also does not make reference to P. 2839 and 2840 as the numbering runs from 5502 – 5816.

29. As at the time the plaintiff was paying for the site visit in March 2018, there is indication the Defendants were already in physical occupation of the two plots and had already developed the same. It appears the share certificate given to the plaintiff in 1985 was purely for membership and not because she had purchased plots. This explains why the plot numbers were subsequently inserted on the certificate after she had been allotted the plots in 1990 being plot nos 2839 and 2840 and receipts for payment thereof are dated from 1990 onwards.



30. With the missing link on the basis of conversion of P. 2839 and 2840 to L.R Block 105/5616 and 5617 respectively, I now consider the 1st Defendant's claim to plots 5616 and 5617. Has thus Defendant proved the alleged fraud on how the plaintiff acquired title to land he claims he was already in possession thereof?
31. The 1st Defendant also relied on the extract of map 9 (Dex-1). He produced an allocation document from Embakasi Ranching Ltd. (sued as 2nd Defendant in the counter-claim) issued to him signed on 7th December, 2006 allocating V6019 – 105/5616 and V6018 – 105/5617. Equally he produced two receipts dated 27th October, 2006 for a payment of 32,000 each verified by some two signatures under the letter head of the 2nd Defendant for the two plots. The 1st Defendant further produced a payment for site visit charged at Kshs.5000 and receipt issued dated 20th May, 2010.
32. There was produced a payment in favour of the 2nd Defendant (Embakasi Ranching Ltd) for Kshs.30,000 vide Bankers Cheque dated 28th March, 2011 and received on 4th May, 2011 for processing title for 105/5616 and 5617 and rates receipt payment bearing the name of 2nd Defendant (in counter claim). To further prove that he was in possession, he also produced a burial permit for Emanuel Hyabute who he says was interred on the suit land. There is produced a photograph of the grave bearing a cross with the names of the deceased inscribed on it (Dex 7 and 11). The 1st Defendant argues that since he has always been in possession, title ought not to have been issued to the plaintiff. He urged the court to dismiss the plaintiff's suit, cancel her title and allow the reliefs in the counter-claim.
33. The Plaintiff rightly submitted on the provisions of section 107, 109, and 112 of the *Evidence Act* Cap 80 on whose shoulders the burdens of proof lies. According to her, she produced leases and certificate of leases for the suit titles in her name hence she has discharged her burden of proving ownership. She relies on the allocation of P. 2839 and 2840 to her in 1991 which she avers were later changed to plot nos 5616 and 5617. The Plaintiff has brought out evidence to support the root of her title and the question which continue to beg answers is whether the land was still allocated to her was still available to her to legitimise the title processed in her name.
34. As at the time the plaintiff was paying for the site visit and receiving the site report converting P. 2839 and 2840 to the suit plot numbers in March, 2018, the 1st Defendant had earlier been allocated the plots with the numbering of Block 105/5616 and 5617 by Embakasi Ranching Ltd. This information must have been in the knowledge of the official who issued the site visit receipt and also the person who took the plaintiff for the site visit. I am proceeding on this presumption because the Company must have kept records and they have not denied documents produced by the 1st Defendant.
35. The Plaintiff was equally aware of the presence of a third party on the land because she stated that during the site visit, she asked who had placed the building materials on the land but was told she was the original allottee. The plaintiff on the same breath claims she thought the building materials belonged to the neighbour of the adjacent plot. She does not at this time disclose that one of the plots was already built and occupied. Despite the status of the land, both the Plaintiff and the 2nd Defendant (in the counter-claim) proceeded to have the titles of the suit plots processed in her favour. Their action draws an inference of collusion to steal a match from the 1st Defendant.
36. The plaintiff in her submissions questioned the allotment letters issued to the 1st defendant stating that the 1st defendant did not produce additional documents to support his allocation of the suit plots. In his written statement, the 1st Defendant stated that he learnt Embakasi Ranching Ltd was selling plots and having developed an interest he visited the company's offices and confirmed the plots were for sale. The 1st Defendant did not indicate joining as a member but expressing interest to purchase and proceeded to purchase.



37. The 1st defendant produced receipts issued titled non-member certificate of ownership. To this end, the 1st Defendant did not have to produce plot ownership certificate. The plaintiff did not call a witness from the Embakasi Ranching Ltd to prove that their stamps on the document titled “allocated” was phony (not genuine). The 1st Defendant produced a similar document found at pages 11 and 13 of his bundle of documents. He also produced a verification form except his document is dated 4th April, 2011 as well as a site visit receipt. An extract of map 9 is found at page 10 of the 1st Defendant’s documents. In essence, the 1st Defendant has also presented documents to support his claim to the plots.
38. From the foregoing, there is no dispute that both parties source their interest from the Embakasi Ranching Ltd. It is also not disputed that the parties are claiming plots occupying the same geographical position. Further, the Plaintiff’s allotment letters were the first to be issued although linked to the numbering of Block 105/5616 and 5617 in March of 2018. By the time this conversion was being done, the 2nd Defendant had sold these same two plots to the 1st Defendant in 2006 and the 1st Defendant proceeded to develop and occupy the same.
39. In distancing himself from being a trespasser on the suit plot, the 1st Defendant pleaded that he did a search before engaging the 2nd Defendant with purchase process. The copies of searches undertaken were produced and they were in respect of Block 105/5616 and 5617 which searches did not bear the Plaintiff’s name as she had not obtained the registration. The 1st Defendant also produce a payment receipt dated April 2011 for processing of title and explained that whenever he made follow ups, he was told the process was on going. Pursuant to the presidential directive at the 2nd Defendant to issue titles, when he made follow-up, now he was told there was a dispute. Thus, if the 2nd Defendant acted in good faith, they would not have sold the land to the 1st Defendant just like they would have withheld processing the Plaintiff’s title.
40. There is no evidence led by the Plaintiff pointing to what would have made the 1st Defendant know her interest in the suit plots had he undertaken due diligence. It is the 2nd Defendant who decided to change the numbering of the plots and offer them for sale to new parties and in this case the 1st Defendant. If there is any breaches, the blame is on Embakasi Ranching Ltd who the Plaintiff did not sue. The claim against the 1st Defendant for trespass can only succeed had there been no valid transaction between the Company and the 1st Defendant.
41. The Plaintiff alleged that she had been in possession from the time she was allocated the land but this assertion is cast in doubt for the reasons that she didnot notice activities on this land. To the extent she was wondering in 2018 who could have deposited building materials on the suit parcels. She did not in her pleadings and evidence state when the acts of alleged trespass begin. She was indolent after receipt of her allotment letters which resulted in the Ranching Company defrauding her of her plots. The 1st Defendant in my opinion and I so hold is an innocent purchaser for value.
42. Since the plots were already developed with houses as explained by the 1st Defendant when the plaintiff presented her documents for verification. The decision to proceed and obtain title was irregular, illegal and did not give her a better title than the 1st Defendant. Had the 1st Defendant developed the suit plot post the issuance of the title, I would hold the defendant as trespasser. However, in this instance, where occupation is prior to issuance and documents produced to support such occupation, I am not persuaded to find there is no trespass.
43. In light of the foregoing, I find the plaintiff has not proved a case against the Defendants and hereby dismiss her claim. Instead, I find the counter-claim is proved as the plaintiff (in the original claim)



obtained her title irregularly. Consequently, I enter judgment for the 1st Defendant as prayed in the counter-claim that:

- a. A permanent injunction is hereby issued restraining the 1st Defendant in the Counter-claim by herself, her agents, servants or employees from trespassing upon evicting from or interfering with the plaintiff's possession and quiet enjoyment of the suit properties.
- b. A declaration that the transfer and/or registration of the 1st Defendant (in the counter-claim) as the registered proprietor of L.R Nairobi Block 105/5616 and 105/5617 were irregular, unlawful and fraudulent and therefore null and void ab-initio.
- c. An order for the cancellation and rectification of the Register to remove the name of the 1st Defendant (in the counter-claim) and the said titles to be transferred and registered in favour of the plaintiff in the Counter-claim.
- d. Costs of the suit and the counter-claim.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER, 2024.

A. OMOLLO

JUDGE

