



Mwaitwari v Thangari Limited & 2 others (Environment & Land Case E032 of 2023) [2024] KEELC 14032 (KLR) (18 December 2024) (Order)

Neutral citation: [2024] KEELC 14032 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E032 OF 2023
BM EBOSO, J
DECEMBER 18, 2024**

BETWEEN

PETER MAINA MWAITWARI PLAINTIFF

AND

THANGARI LIMITED 1ST DEFENDANT

THE LAND REGISTRAR, THIKA 2ND DEFENDANT

THE HON ATTORNEY GENERAL 3RD DEFENDANT

ORDER

1. The plaintiff initiated this suit through a plaint dated 12/4/2023. He sought the following verbatim reliefs against the defendants:
 - a. A declaration that the irrevocable Deed of Understanding/ Compensation dated 12/10/2016 is absolute and irrevocable.
 - b. In the alternative, the 1st defendant compensates the plaintiff an amount equivalent to one (1) acre at the current market valuation rates.
 - c. A permanent injunction restraining the 1st defendant, its servants, workmen, agents, successors or any other person from claiming under it or in any manner whatsoever from evicting, alienating, disposing of, subdivision, leasing, charging, trespassing upon or dealing with the property registered as title number 4148/306 (Juja/Kiaura Blk 24).
 - d. An order of mandatory injunction directing the land registrar Thika to reverse the entries affected over title number 4148/306 (Juja/Kiaura Blk 24).
 - e. An order directing the land registrar, Thika to register one (1) acre of the suit property in the name of the plaintiff within 60 days from the date of the Judgment.



- f. Costs of the suit and any other or further relief that this honourable court may deem just and fit to grant.
2. The case of the plaintiff is that for a long period of time, they occupied Land Reference Number 129933/1. Through an irrevocable Deed of Understanding / Compensation dated 12/10/2016, the 1st defendant undertook to excise one (1) acre for the plaintiff and one Nicholas Njane Mwangi. The plaintiff adds that, in cohort with the said Nicholas Njane Mwangi, the 1st defendant has caused the suit land to be subdivided into plots without excising the one (1) acre agreed in the Deed of Understanding / Compensation. He further contends that the 1st defendant has issued to him a verbal eviction notice.
3. An ex parte hearing of the suit took place on 17/9/2024. The plaintiff subsequently filed written submissions through M/s Malela Basil & Company Advocates. The court reserved 18/12/2024 as the date for delivery of Judgment in the suit.
4. At the stage of preparing to write the Judgment, it has emerged that the irrevocable Deed of Understanding / Compensation was between the plaintiff and Nicholas Njane Mwangi on one part and the 1st defendant on the other part. The said Nicholas Njane Mwangi who was a key party to the Deed of Understanding / Compensation was, for unknown reasons, not joined as a party to this suit.
5. Secondly, it does emerge from the Deed that the agreement between the parties was that the 1st defendant would deposit “an amount equivalent in value to one (1) acre of the said parcel of land into the Clients Account of M/s Ngure Mbugua & Co Advocates.” The Deed is silent on what was to follow. The Deed did not state for whose benefit the money was to be deposited in the above Client Account.
6. It is clear from the above contextual background that both Nicholas Njane Mwangi and the Proprietor(s) of M/s Ngure Mbugua & Co Advocates are necessary parties to this suit if the key questions in the dispute in this suit are to be effectually and completely adjudicated and settled.
7. The court also notes that whereas the plaintiff is waving the Deed as the basis of his claim, he has not bothered to exhibit a current valuation report reflecting the monetary equivalent of one acre. Neither has he exhibited an official search relating to the suit land.
8. For the above reasons, the court issues the following orders:
 - a. The order reserving a judgment date in this suit is vacated.
 - b. The plaintiff is ordered to amend the plaint and join Nicholas Njane Mwangi and the Proprietor(s) of the law firm of Ngure Mbugua & Co Advocates as defendants in this suit within 21 unexcluded days. In default, this suit shall stand struck out.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 18TH DAY OF DECEMBER 2024

B M EBOSO

JUDGE

In the Presence of: -

Ms Mutiso for the Plaintiff

Court Assistant: Hinga

