



**Ndegwa v Embakasi Ranching Company Limited & 9 others (Environment & Land Case E351 of 2021) [2023] KEELC 608 (KLR) (26 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 608 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E351 OF 2021  
EK WABWOTO, J  
JANUARY 26, 2023**

**BETWEEN**

**JACINTA MUMBI NDEGWA ..... PLAINTIFF**

**AND**

**EMBAKASI RANCHING COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**MAGDALENE MIRIGO NDERITU ..... 3<sup>RD</sup> DEFENDANT**

**EDWIN NDUNGU ..... 4<sup>TH</sup> DEFENDANT**

**CHARLES RIBUTHI GICHECHA ..... 5<sup>TH</sup> DEFENDANT**

**WILSON NJENGA MBUGUA ..... 6<sup>TH</sup> DEFENDANT**

**IRENE NJERI KARIUKI ..... 7<sup>TH</sup> DEFENDANT**

**STEVEPHEN MATHENGE KAGIRI ..... 8<sup>TH</sup> DEFENDANT**

**ANTONY CYRUS NJAGI NYAGA ..... 9<sup>TH</sup> DEFENDANT**

**TERESA NYAWIRA WAMBUGU ..... 10<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff filed an amended plaint dated November 2, 2021 wherein she sought the following orders;
  - a) That an order of permanent injunction do issue to permanently restraining the defendants, their servants, surrogates and or agents from dealing with, transferring ownership, processing titles and/or interfering with the plaintiff's ownership of all suit properties otherwise known and identified as;



- a. Nairobi Block 105/1178
  - b. Nairobi Block 105/8700
  - c. Nairobi Block 105/8702
  - d. Nairobi Block 105/8703
  - e. Nairobi Block 105/8708
  - f. Nairobi Block 105/8709
  - g. Nairobi Block 105/8710
  - h. Nairobi Block 105/8711
  - i. Nairobi Block 105/8712
  - j. Nairobi Block 105/8419
  - k. Nairobi Block 105/8734
- b) That an order directing the 2<sup>nd</sup> defendant to amend the lands register by cancelling certificates of lease and any adverse entries in relation underlisted parcels and subsequently substitute the same with the names of the plaintiff;
- a) Nairobi Block 105/1178
  - b) Nairobi Block 105/8700
  - c) Nairobi Block 105/8702
  - d) Nairobi Block 105/8703
  - e) Nairobi Block 105/8708
  - f) Nairobi Block 105/8709
  - g) Nairobi Block 105/8710
  - h) Nairobi Block 105/8711
  - i) Nairobi Block 105/8712
  - j) Nairobi Block 105/8419
  - k) Nairobi Block 105/8734
- a) An order directing the 2<sup>nd</sup> defendant to process and subsequently issue original certificates of title to the plaintiff herein in relation to the properties;
- a) Nairobi Block 105/1178
  - b) Nairobi Block 105/8700
  - c) Nairobi Block 105/8702
  - d) Nairobi Block 105/8703
  - e) Nairobi Block 105/8708



- f) Nairobi Block 105/8709
  - g) Nairobi Block 105/8710
  - h) Nairobi Block 105/8711
  - i) Nairobi Block 105/8712
  - j) Nairobi Block 105/8419
  - k) Nairobi Block 105/8734
- b) That costs of this suit be awarded to the plaintiff.
2. Upon being served with the plaint and summons to enter appearance, only the 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein duly entered appearances and filed defence.
  3. It was the plaintiff's case that between the year 1978 to 1989, she enrolled as a member of the 1<sup>st</sup> defendant company where she acquired several properties. The properties were 34 plots being 17 original and an extra 17 bonus plots, which plots were duly surveyed, paid for and allocated to the plaintiff and the spouse.
  4. The plaintiff averred that it was a company policy that for each of the original plot purchased the existing members were allocated a bonus plot corresponding to the original and she has been continuously been in occupation of the said plots which are adjacent to each other.
  5. It was also her case that, she fully participated in the verification exercise and all her documents were verified and subsequently assigned corresponding numbers by land officials from the 2<sup>nd</sup> defendant upon which she was told to wait the issuance of the original title deed.
  6. It was also the plaintiff's case that in the year 2020, she discovered that the 1<sup>st</sup> and 2<sup>nd</sup> defendants had corrupted the initial list and only prepared 17 original titled deeds in relation to the bonus plots and no title deed was available for the principal plots. Upon lodging a complaint and following up with the 1<sup>st</sup> and 2<sup>nd</sup> defendants, she discovered that 12 of her original plots had been fraudulently allocated to other parties who were unknown to her. Particulars of which are as follows: -
    - a) Plot I. 121 (Block 105/8703) – Charles Ributhi Gicheha.
    - b) Plot No L 452 105/8708.
    - c) Plot No L 452.
    - d) R 1153.
    - e) 434 – Stephen Mathenge Kagiri 105/8710.  
Teresa Nyawira Wambugu.
    - f) 1090 Wilson Njenga Mbugua 105/8711.
    - g) Irene Njeri Kariuki 105/8419.
    - h) 605 Steve Mathenge Kagiri 105/8712.
    - i) 277 Anthony Cyrus Njagi Nyaga 105/8734.
    - j) Nairobi Block 105/11178 Magdalene Mirigo Nderitu.
    - k) Nairobi Block 105/8709 Edwin Ndungu Mathenge.



7. During the hearing of the suit, The plaintiff herein testified as PW1 and also as the sole plaintiff's witness. She adopted her witness statement and bundle of documents filed herein as her evidence in chief and urged the court to grant her the prayers sought as per her amended pleadings.
8. On cross examination by counsel for the 2<sup>nd</sup> defendant, she stated that she had sued the 2<sup>nd</sup> defendant because she had not been given her titles yet she had participated in the verification exercise.
9. Upon cross examination by Counsel for the 3<sup>rd</sup> defendant, she stated that she bought one share from the 1<sup>st</sup> defendant in 1986 and was issued with share certificate number 10368 and she was issued with a bonus plot courtesy of that share certificate. She also stated that she does not know the location of the 3<sup>rd</sup> defendant's plot since it is not in the same area as her plot.
10. On re-examination by her Advocate, she stated that the corresponding number for share certificate number 44 is 10368 whose corresponding number is R71 and nobody has ever laid claim on this plot.
11. The 2<sup>nd</sup> and 3<sup>rd</sup> defendant filed statements of defence dated November 1, 2021 and December 16, 2021 respectively but closed their cases without calling any witness. The 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendant despite being served never filed any documents and neither did they participate in the trial herein.
12. The plaintiff herein filed written submissions dated December 31, 2022. Counsel submitted that the rendition of the facts as captured by the plaintiff and the testimony and commentary evidence that was produced had not been controverted by the defendants. It was submitted that the plaintiff had discharged her evidential burden under section 107 and 108 of the *Evidence Act* and has demonstrated she is the beneficial owner of the suit properties.
13. In respect to the 3<sup>rd</sup> defendant's claim to land reference number Nairobi/Block 105/11178, counsel argued that page 55 and 56 of the plaintiff's bundle of documents showed that the same had been transferred to the plaintiff and further Plot No. 71 had also been allocated to the plaintiff vide parcel number Nairobi/Block 105/11173. Reliance was made on the following cases in support of the plaintiff's case; *Munyu Maina v Hiram Gathiba Maina* [2013] eKLR, *Linus Nganga Kiongo & 3 Others v Town Council of Kikuyu* [2012] eKLR and *Peter Ngigi & Another (Suing as legal representative of the Estate of Joan Wambui Ngigi v Thomas Ondiki Oduor & Another* [2019] eKLR.
14. The 2<sup>nd</sup> defendant filed its written submissions January 20, 2023 through Elizabeth Mwalizi, State Counsel. Counsel outlined two issues for determination;
  - i) Whether there was any wrongdoing on the part of the 2<sup>nd</sup> defendant.
  - ii) Whether the plaintiff is entitled to costs.
15. Counsel argued that the Chief Land Registrar does not allocate land and there was also no evidence produced by the plaintiff confirming that she ever raised a complaint with the Chief Land Registrar and further it is only the 1<sup>st</sup> defendant who can clarify if indeed the plaintiff was allocated the said properties. In view of the foregoing, the 2<sup>nd</sup> defendant cannot be faulted for any wrongdoing herein.
16. On the issue of costs, Counsel submitted that the plaintiff never issued any demand letter to the 2<sup>nd</sup> defendant stating her intention to sue and hence she is not entitled to any costs.
17. Having reviewed and considered the pleadings filed by the parties, the witness statements; and having similarly taken into account the written submissions filed by the plaintiff and 2<sup>nd</sup> defendant the following issues do arise and are thus germane for determination;
  - i) Whether the plaintiff has proven her case to the required standard.



ii Whether the plaintiff is entitled to the Reliefs sought.

18. The plaintiff tendered and or adduced evidence, which showed that same was duly allocated the suit properties and that post the allocation of the suit property, same was requested to pay *inter-alia* site visitation fees, which the plaintiff duly paid.
19. Further, the plaintiff also stated that after the payment of the visitation fees, in the manner demanded by the 1<sup>st</sup> defendant, the 1<sup>st</sup> defendant organized and facilitated the site visit and thereafter the suit plots were duly identified, mapped and surveyed.
20. It is also imperative to recall that the 1<sup>st</sup> defendant thereafter allowed the plaintiff to enter upon, take possession and/or occupation of the duly identified plots, which comprised the suit properties
21. Based on the totality of the documents which were produced by the plaintiff and taking into account that the contents of the said documents were not challenged, impeached and or controverted, it is safe to find and hold that the plaintiff was lawfully and legally allocated the suit properties
22. Besides, it is similarly sufficient to hold, that upon being issued with the Title documents pending issuance of the certificate of title for the other plots and having duly made the requisite payments, it was deemed that the plaintiff had indeed become the lawful and legitimate proprietor of the suit property.
23. Consequently, and in the premises, it was neither open nor available for the 1<sup>st</sup> defendant to rescind, alter and or interfere with the plaintiff's rights over the suit properties without notice to and or involvement of the plaintiff.
24. Suffice it to hold, that the documents which were issued to and in favor of the plaintiff, coupled with the payments of the requisite fees, which was duly acknowledged by the 1<sup>st</sup> defendant, constituted and conferred a legitimate Interest to and in favor of the plaintiff.
25. To this end, it is appropriate to adopt and endorse the holding of the court in the case of *Ocean View Plaza Ltd v Attorney General* [2002] eKLR, where the Honourable Court observed as hereunder;

“Allotment of land to a citizen or others protected under the *Constitution*, which action is symbolized by title deeds, invests in the allottee inviolable and indefeasible rights that can only be defeated by a lawful procedure under the Land Acquisition Act.”
26. Having duly and lawfully allocated and/or alienated the suit properties to and in favor of the plaintiff herein, it is appropriate to observe and underscore that the suit properties thereafter became private property belonging to the plaintiff.
27. It may well be that the title documents for some suit properties had not been generated and or issued, but the interest in respect of the said properties, had passed to and been conferred on the plaintiff.
28. To this end, it is therefore appropriate to note that the plaintiff had become the owner of the suit properties and therefore the 1<sup>st</sup> defendant herein could not seek to re-alienate and/or re-allocate the suit properties to any other parties.
29. In the premises, the 1<sup>st</sup> defendant's purported attempt to disposes the plaintiff of the properties and to transfer same in favor of a third parties was therefore illegal and unlawful. Clearly, the rights over and in respect of the suit Properties, which are rights in rem, had passed to and in favour of the plaintiff.



30. Nevertheless, it is imperative to underscore that the property rights over and in respect of the suit property had vested in the plaintiff and hence the 1<sup>st</sup> defendant had no legal rights, if any, capable of being passed over to any other third-party.
31. In the circumstances, the purported actions by and on behalf of the defendants, which are the subject of challenge vide the suit herein, were therefore illegal, unlawful and invalid.
32. To underscore the fact that the title in respect of the suit properties had already passed to and in favor of the plaintiff and that the plaintiff could not be divested of same, it is imperative to take cognizance of the decision in the case [Kenya Ihenya Company Ltd & Another v Njeri Kiribi](#) [2019]eKLR, where the court held as hereunder;

“24. Thirdly, it was clear that the 1<sup>st</sup> appellant had allotted the suit land to both the Respondent and the 2<sup>nd</sup> appellant hence the learned Judge’s conclusion that there was a double allocation.

That being the case, since the respondent was first in time, as the evidence is clear that she completed making payments in the year 1983 whilst the 2<sup>nd</sup> appellant claimed to have purchased the same on 24<sup>th</sup> June, 1997, she was the bonafide proprietor. In that regard, the law is succinctly spelt out in *M’Ikiara M’Rinkanya and Another v Gilbert Kabeere M’Mbijiwe* [1982 – 1988] 1 KAR 196 wherein this Court held that:-

“Where a similar situation as in this case arose, there was a double allocation to a plot issued by the council of the area. the court had noted that the said first allotted letter to the original plaintiff had never been cancelled. That the council had no power to allocate the same property again without following the laid down procedure of re-allocating the property.”

33. It is worth noting that the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendant, never participated in the trial despite being served. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants but never called any witness to controvert the allegations made against them by the plaintiff. Therefore, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants defence remains mere allegations and the plaintiff testimony was not rebutted. See the case of [Billsab Matiangi v Kisii Bottlers Limited & Another](#) [2021] eKLR, where the court held that: -

“Where a plaintiff gives evidence in support of her case, but the defendant fails to call any witness in support of its allegations, then the plaintiff’s evidence is uncontroverted and the statement of defence remains mere allegations”

34. However, uncontroverted evidence is not automatic evidence and the plaintiff still has an obligation to prove his case to the required standard of probabilities. The plaintiff herein was obligated to tender and avail sufficient and credible evidence to establish and prove that same is indeed the legitimate owner of the suit property. To this end, I wish to point out that the plaintiff indeed brought forth and laid before the court uncontroverted evidence, which have established and authenticated the plaintiff’s rights to and entitlement over the suit Properties In the premises, it is appropriate to observe that the plaintiff has therefore discharged the burden of proof that laid on her shoulders, as required and stipulated *vide* sections 107 and 108 of the [Evidence Act](#) chapter 80 Laws of Kenya.
35. As pertains to the burden and standard of proof, which laid at the doorstep of the plaintiff, it is worthy to restate the holding in the case of *Agnes Nyambura Munga (suing as the Executrix of the Estate of the late William Earl Nelson) v Lita Violet Shepard (sued in her capacity as the Executrix of the Estate*



of the *Late Bryan Walter Shepard*)[2018] eKLR, the court expounded on section 107 and 109 of the *Evidence Act* as;

“The standard of proof is on a balance of probabilities which Lord Denning in the case of *Miller vs Minister of Pensions* (1947) explained as follows:-“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: „We think it more probable than not?, the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties’ explanations are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

36. To my mind, the evidence put forth by the plaintiff, is sufficient to warrant a finding in favour of the plaintiff. Having already found that the plaintiff has proved her case against the defendants to the required standard, the court finds and holds that she is equally entitled to the prayers sought and I have no reason whatsoever not to grant them.
37. On the issue of costs, section 27 of the *Civil Procedure Act* gives the court the discretion to grant costs and ordinarily costs do follow the suit. The plaintiff herein has succeeded in proving her case however considering the circumstances of the case herein and the fact that the majority of the defendants never resisted the suit, I direct each party to bear own costs of the suit

#### **Final Orders:**

38. Based on the totality of the evidence adduced by the plaintiff herein, it is clear that indeed the plaintiff has met and satisfied the requisite threshold to warrant the grant of the orders sought.
39. In the premises, I find and hold that the plaintiff has proved her case to the required standard and same is thus entitled to the following orders;
  - i) That an order of permanent injunction is hereby issued restraining the defendants, their servants, surrogates and or agents from dealing with, transferring ownership, processing titles and/or interfering with the plaintiff’s ownership of all suit properties otherwise known and identified as;
    - a. Nairobi Block 105/1178
    - b. Nairobi Block 105/8700
    - c. Nairobi Block 105/8702
    - d. Nairobi Block 105/8703
    - e. Nairobi Block 105/8708
    - f. Nairobi Block 105/8709
    - g. Nairobi Block 105/8710
    - h. Nairobi Block 105/8711
    - i. Nairobi Block 105/8712
    - j. Nairobi Block 105/8419
    - k. Nairobi Block 105/8734



- ii) That an order is hereby issued directing the 2<sup>nd</sup> defendant to amend the lands register by cancelling certificates of lease and any adverse entries in relation underlisted parcels and subsequently substitute the same with the names of the plaintiff;
- a) Nairobi Block 105/1178
  - b) Nairobi Block 105/8700
  - c) Nairobi Block 105/8702
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  - f) Nairobi Block 105/8709
  - g) Nairobi Block 105/8710
  - h) Nairobi Block 105/8711
  - i) Nairobi Block 105/8712
  - j) Nairobi Block 105/8419
  - k) Nairobi Block 105/8734
- iii) An order is hereby issued directing the 2<sup>nd</sup> defendant to process and subsequently issue original certificates of title to the plaintiff herein in relation to the properties;
- a) Nairobi Block 105/1178
  - b) Nairobi Block 105/8700
  - c) Nairobi Block 105/8702
  - d) Nairobi Block 105/8703
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  - g) Nairobi Block 105/8710
  - h) Nairobi Block 105/8711
  - i) Nairobi Block 105/8712
  - j) Nairobi Block 105/8419
  - k) Nairobi Block 105/8734
- iv. Each party to bear own costs of the suit.

Judgment accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26<sup>TH</sup> DAY OF JANUARY 2023.**

**E.K. WABWOTO**

**JUDGE**



**In the presence of: -**

**Mr. Masaviru for the Plaintiff**

**N/A for 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants**

**Ms. Mwalizi for the 2<sup>nd</sup> defendant.**

**Caroline Nafuna – Court Assistant**

**E.K. WABWOTO**

**JUDGE**

