



REPUBLIC OF KENYA



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**Ngure v Embakasi Ranching Company Limited & 4 others (Environment & Land
Case E125 of 2022) [2025] KEELC 3380 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 3380 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E125 OF 2022**

OA ANGOTE, J

MARCH 27, 2025

BETWEEN

WILSON NGANGA NGURE PLAINTIFF

AND

EMBAKASI RANCHING COMPANY LIMITED 1ST DEFENDANT

EVERLYN IMINZA BENGAL 2ND DEFENDANT

RICHARD MURAGURI MWANGI 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

THE HON ATTORNEY GENERAL 5TH DEFENDANT

JUDGMENT

Background

1. Vide the Complaint dated 30th March, 2022, the Plaintiff seeks the following reliefs as against the Defendants:
 - i. A declaration that the Plaintiff is the sole legal and beneficial owner to all those parcels of land known as Title Number Block 105/1235 and Title Number Block 105/1240.
 - ii. An order of eviction against the 2nd and 3rd Defendants from the parcels of land known as Title Number Block 105/1235 and Title Number Block 105/1240.
 - iii. A permanent injunction against the 1st Defendant and 4th Defendant from allocating and/or issuing a lease or any title document relating to parcels known as Title Number Block 105/1235 and Title Number Block 105/1240 to the 2nd and 3rd Defendant or any other person other than the Plaintiff.



- iv. A mandatory injunction compelling the 1st Defendant and 4th Defendant to issue the Plaintiff with a lease and a certificate of lease for parcels known as Title Number Block 105/1235 and Title Number Block 105/1240.
 - v. Mesne Profits.
 - vi. Costs of this suit and interest.
2. It is the Plaintiff's case that sometime in 1982, he bought two shares from the 1st Defendant and was consequently allocated plot numbers Q172 and Q173; that he paid all the requisite charges as per the allotment letter which was followed by the sub-division of the main parcel of land owned by the 1st Defendant and that after the sub-division, the 1st Defendant allocated him Title Number Block 105/1235 and Title Number Block 105/1240.
 3. The Plaintiff averred in the Plaint that he was further advised to pay more charges to enable the 1st Defendant prepare and transfer a lease into his name and that despite this, together with a lot of follow up and promises, the 1st Defendant is yet to issue him with a lease and a certificate of lease.
 4. According to the Plaintiff, the 1st Defendant's failure aforesaid constitutes illegality and breach of contract, the particulars of which include its failure to issue him with a lease document despite receiving payments and failing to respond to his inquiries and that he was recently shocked to learn that the 2nd Defendant has taken possession of Title Number 105/1235 whereas the 3rd Defendant has taken possession of Title Number 105/1240 which constitute trespass.
 5. The Plaintiff asserts that the trespass has been occasioned by the negligence, and with the collusion and/or connivance of the 1st Defendant and that he is apprehensive that the 1st Defendant will issue a lease and a certificate of lease in favour of the 2nd and 3rd Defendants to its detriment. The 1st Defendant did not file a Defence.
 6. The 2nd Defendant filed a Defence on 9th May, 2022. She denied the assertions as set out in the Plaint stating that there is no correlation between the Plaintiff's alleged plot Q173 and Title Number Block 105/1235 and that she lawfully acquired the property from the 1st Defendant and has been in peaceful and quiet possession thereof since 2009 when she was granted vacant possession.
 7. According to the 2nd Defendant, if the Plaintiff has any right to the piece of land which gave rise to Title Number Block 105/1235, the same has been extinguished and any claim thereto is statutorily barred by, and under the provisions of the Limitations of Actions Act and that as the registered proprietor of Title Number Block 105/1235 her title is indefeasible by virtue of Section 25 of the [Land Registration Act](#).
 8. The 3rd Defendant filed a Defence on 13th June, 2022. Vide the Defence, he denied the assertions as set out in the Plaint stating that he is a stranger to all the allegations therein. The 4th and 5th Defendants filed a Defence on the 7th June, 2022. Vide their Defence, they denied all the assertions as set out in the Plaint stating that no reasonable cause of action has been raised against them in this suit.

Hearing and Evidence

9. The matter proceeded for hearing on the 28th May, 2024. The Plaintiff, as PW1, adopted his witness statement dated 29th March, 2022 as his evidence in chief and produced the documents dated 3rd March, 2023 as PEXHB1 and the Supplementary bundle dated 20th May, 2024 as PEXHB2.



10. It was his evidence vide the statement that sometime in 1982, he purchased two shares from the 1st Defendant who was in the business of selling land; that he was consequently allocated plot numbers Q172 and Q173 and that as was custom, he was issued with two bonus plots being Q172B and Q173B for which the 1st Defendant has already issued him with titles.
11. PW1 stated that after sub-division, he was allocated Title Number Blocks 105/1235 and Block 105/1240 by the 1st Defendant; that he paid for the lease and transfer from the 1st Defendant but the same was taking long and upon inquiring, he was informed that according to their records, the properties had been allocated to the 2nd and 3rd Defendants respectively.
12. Upon further inquiries, he stated, the 1st Defendant wrote a letter to the Ministry of Lands clarifying that the two parcels belonged to him but when he visited the Ministry of Lands, he was informed that no such confirmation had reached them and that he has engaged in a depressing back and forth with the 1st and 4th Defendants offices with no concrete reason as to why he has not been issued with a title.
13. PW1 stated that he was shocked to learn that the 2nd Defendant has taken possession of parcel Title Block 105/1235 whereas the 3rd Defendant has taken possession of Block 105/1240; that in so doing, they have trespassed on his parcels of land with the connivance of the 1st Defendant.
14. It was his evidence on cross-examination that he has never had a discussion with the 2nd Defendant; that he doesn't have a title deed; that he cannot recall the year she entered into parcel 1235; that the numbers Q172 and Q173 are not indicated in the share certificate; that he paid the Kshs 1,810/= indicated in the sub-division scheme but has no receipt; that he was aware of when the 2nd Defendant begun construction but had no money to sue him.
15. PW1 testified during re-examination that the share certificate shows that he is a shareholder and entitled to two shares; that the letter of allotment dated the 28th November, 1982 shows the two specific plots being Q172 and Q173; that evidence of the two bonus plots has been adduced; that the sub-division scheme shows the fees of Kshs 1, 810 and that the transfer has his name.
16. DW1 was Evelyn Bengal, the 2nd Defendant. She adopted her witness statement dated 9th May, 2022 as her evidence in chief and produced the bundle of documents dated 9th May, 2022 as DEXHB1 and the Supplementary list of documents dated 8th March, 2023.
17. It was her evidence that she is the registered proprietor of the suit property which was registered in her name on 27th March, 2019; that she acquired the suit property from the 1st Defendant in the year 2009; that she has constructed a four bedroomed house on the suit property where she resides with her two children; that she was unaware of the Plaintiff until she was served with the court papers and that as the legally registered owner of the suit property, she cannot be deprived of the same by a third party.
18. In cross-examination, PW1 stated that the plot she was given was V. 10122; that it was given to her before she bought it; that she does not know the meaning of "V" and cannot remember the name of the surveyor; that at the time, she was a non-member and was not a shareholder; that she doesn't know what 019887 meant and that the receipt was signed by people she didn't know.
19. PW1 stated that she does not remember the purchase price for the land and does not have the sale agreement; that the receipt does not indicate the computer number; that she made payments in 2020 although the Certificate of Lease was issued in 2019; that the plot is on map 7 while the lease shows the parcel to be on map 5; that she does not have the drawings and approvals with respect to her house and that she would not know if the land was allocated to the Plaintiff



20. It was her evidence on re-examination that she never met the Plaintiff before the trial; that she took possession of the suit property after purchasing the same from Embakasi Ranching whom she paid the purchase price; that no one ever told her that the plot was theirs; that she has never been questioned by the police and that she was not a member and was given a non-membership certificate.

Submissions

21. The Plaintiff filed submissions on 18th June, 2024. Counsel submitted that despite not being the registered proprietor of Title Block 105/1235, the 2nd Defendant's title is not indefeasible by virtue of Section 25 of the *Land Registration Act* as she has not sufficiently established the root of her title. Reliance in this respect was placed on the cases of Samuel Kamere vs Lands Registrar, Kajiado[2015]eKLR, Dina Management Limited vs County Government of Mombasa & 5 Others[2023]KESC 30(KLR)(21 April, 2023), Munyu Maina vs Hiram Gathitha Maina[2013]eKLR and Danson Kimani Gacina & Another vs Embakasi Ranching Company Ltd[2014]eKLR.
22. According to Counsel, the 2nd Defendant's plea of adverse possession is equally untenable in the circumstances; that as stated in Mbira vs Gachuhi(2002) 1EALR 137 and Kasuve vs Mwaani Investments Ltd & 4 Others[2004]1KLR 184, adverse possession runs against a title and there being no title issued in the Plaintiff's names, the 2nd Defendant cannot sustain this claim.
23. It was submitted that in any event, the 2nd Defendant has not established when she took possession of the suit property whereas the Plaintiff has been pursuing legal title to the property for over 50 years. As regards the 3rd, 4th and 5th Defendants, it was submitted that having pleaded ignorance of the allegations against them without more, the prayers sought as against them should be granted and that ultimately, the Plaintiff has established his case and is entitled to the reliefs sought.
24. The 2nd Defendant filed submissions on the 9th August, 2024. Counsel submitted that pursuant to Section 80 of the *Land Registration Act*, a party cannot seek the cancellation of a registered owner's title without pleading fraud or mistake as has been done herein and that no particulars have been given with respect to the trespass or the alleged negligence, collusion or connivance of the 1st and 2nd Defendants.
25. It was submitted that pursuant to Sections 24 and 25 of the *Land Registration Act*, and as expressed in Joseph Kipchirchir Koech vs Philip Cheruiyot, Kericho High Court ELC 31 of 2013, a registered proprietor's ownership of land can only be defeated by proof that the land was acquired by fraud or misrepresentation to which the proprietor is proved to be a party or illegally, unprocedurally or through a corrupt scheme and that the Plaintiff not having pleaded the same, the court cannot consider it. Reliance in this respect was placed on the case of Patrick Muiru Kamunguna vs Kaylift Services Ltd & Another, Nyeri Civil Appeal No 31 of 2019.

Analysis and Determination

26. Having duly considered the pleadings, testimonies and the rival submissions, including all the authorities cited therein, the following arise as the issues for determination:
- i. Whether the Plaintiff is the legitimate proprietor of L.R No's 105/1235 and 105/1240?
 - ii. What are the appropriate orders to issue?
27. Vide the present suit, the Plaintiff seeks, inter-alia, for a declaration that he is the legal and beneficial owner of the parcels of land known as Title Block Numbers 105/1235 and 105/1240, eviction orders against the 2nd and 3rd Defendants, permanent injunctive orders restraining the 1st and 4th Defendants



- from issuing any titles in the names of the 2nd and 3rd Defendants, and mandatory orders compelling the 1st and 4th Defendants to issue him with the title to the suit property and mesne profits.
28. It is his case that the aforesaid parcels emanate from plots Q172 and Q173 allocated to him by the 1st Defendant sometime in 1982; that despite having paid the requisite fees, he was never issued with the titles and that he later on discovered that the 2nd and 3rd Defendants have been issued with the titles thereto.
29. PW1 adduced into evidence copies of the share certificate no 2727; allotment letter dated 28th November, 1982, receipt for civil engineering works dated 3rd May, 1983; bonus allocation forms dated 26th April, 1994; application for consent to transfer dated 30th January, 2011; site visit fees dated the 5th October, 2011 and sub-division approval schemes dated 4th February, 2013 and 14th December, 2012.
30. The Plaintiff also adduced into evidence a letter forwarding the lease dated 3rd January, 2014; legal fees for preparation of lease dated 18th November, 2019; transfers for leases; photos; area map; receipt no 027848 dated 25th November, 2011; letter dated 17th October, 2012 and Sketch Map No 7.
31. In response, the 2nd Defendant maintains that she is the legitimate proprietor of Block 105/1235 having duly acquired the same from the 1st Defendant and that she has constructed her home on the property where she lives with her family.
32. She adduced into evidence copies of the receipt dated 10th September, 2009; non-member certificate of plot ownership; site visit receipt; surveyor report; two sketch maps; receipt with respect to payment and issuance of certificate of lease; lawyer's receipt and certificate of lease dated 27th March, 2019 and the lease dated 27th March, 2019.
33. The 1st Defendant did not file a Defence. The 3rd, 4th and 5th Defendants filed a Defence but they did not participate in the trial and no evidence was adduced at their behest.
34. As aforesaid, the Plaintiff lays claim to the suit properties and is obligated to prove his assertions. This position is succinctly captured in Section 107, 109 and 112 of the Evidence Act, CAP 80, Laws of Kenya. The said sections provide as follows:
- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
35. And Sections 109 and 112 of the same Act which state:
- “109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
- “112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”
36. The evidence adduced in this court shows that the 2nd Defendant is the registered owner of the parcel of land known as Nairobi/Block 105/1235 having been so registered on the 27th March, 2019. Consequently, the law applicable to the 2nd Defendant's title is the Land Registration Act, 2012.



37. Section 26(1) of the *Land Registration Act*, embodies the doctrine of indefeasibility of title as envisaged under the Torrens System of registration. It provides thus:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

38. It can be seen from the above provisions that whereas title is protected, the protection can be removed and the title impeached, if it is proved to have been procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, un-procedurally, or through a corrupt scheme. This was discussed by the court in *Alice Chemutai Too vs Nickson Kipkurui Korir & 2 Others* [2015] eKLR.

39. Both the Plaintiff and the 2nd Defendant trace their acquisition of the suit property from the 1st Defendant. The 2nd Defendant has stated that she acquired the suit property from the 1st Defendant sometime in 2009, it having arisen from plot V. 10122 which was allotted to her by the 1st Defendant.

40. The 2nd Defendant adduced into evidence a receipt dated 10th September, 2009, non-member certificate of plot ownership in respect to plot V.10122 dated the 24th January, 2011 as well as the receipt for the site visit dated 13th November, 2014. At the back of the site visit receipt, it is indicated that the site visit was undertaken on 20th November, 2014 and that “site confirmed for title-105/1235”. The surveyor report dated the 16th November, 2020 identifies the suit parcel.

41. On his part, the Plaintiff adduced the share certificate number 2827 dated 1st August, 1978, provisional letter of allocation dated 28th March, 1982, registration and survey fees for bonus plots dated 20th April, 1994 and site visit receipt dated 5th October, 2011, all in respect to plots Q172, Q173, Q172B and Q173B. None of these make reference to the suit parcel.

42. However, the receipt of 25th November, 2011 identifies plots Q172 and Q173 as parcels 105/1240 and 105/1235. There is also the letter by the 1st Defendant to the Commissioner of Lands dated 17th October, 2012 indicating that the Plaintiff has discharged all his obligations and should be issued with the title to the parcel 105/1235 and the letter of 6th October, 2020 from the 1st Defendant advising the Ministry of Lands that the Plaintiff is as per their records, the owner of the suit parcels.

43. Considering the two scenarios, and noting that no allegations of fraud have been pleaded or indeed proved as against either the Plaintiff or the 2nd Defendant, and there not being any evidence by the officials of the 1st Defendant, or indeed the 4th and 5th Defendants, the picture that arises is that where the 1st Defendant once again allocates to two different persons the same parcel of land.

44. In the circumstances, notwithstanding that the 2nd Defendant was already in possession of the land, as at the time of the confirmation of the 2nd Defendant’s plot as the suit parcel, the same had already been allotted to the Plaintiff and all that he awaited was the issuance of the title. As such, the issuance of the



title in the name of the 2nd Defendant was unprocedural and liable to be impeached pursuant to the provisions of Section 26 of the [Land Registration Act](#).

45. As to the 2nd Defendant's contention that she is entitled to the suit property by way of adverse possession, the same cannot lie in the circumstances. First, the Plaintiff does not have title to the suit property. According to section 37 of the [Limitation of Actions Act](#), a claim for adverse possession can only succeed in respect to land which has been registered, and a title issued. In any event, it is clear that the 2nd Defendant's entry into the property was not hostile, but rather, as a legitimate purchaser.
46. As regards parcel number 105/1240, there is no evidence that the same is registered in the name of the 3rd Defendant or that the title thereto has been issued in favour of any person. Nonetheless, as discussed above, the Plaintiff has sufficiently demonstrated that he acquired plot Q172 from the 1st Defendant. This parcel was subsequently identified as title 105/1240 and he is the legitimate owner thereof.
47. The Plaintiff seeks several reliefs, including a declaration that he is the legitimate proprietor of the suit properties, eviction orders against the 2nd and 3rd Defendants, mandatory injunctive orders compelling the 1st and 4th Defendants to issue him with a title to the suit property and mesne profits.
48. Having found that the Plaintiff is legitimately entitled to the suit parcels, the 2nd Defendant's title is amenable to revocation and/or cancellation pursuant to the provisions of Section 80(1) of the [Land Registration Act](#) which provides:
 - “(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”
49. As the established proprietor of the suit property, the Plaintiff is entitled to all the rights appurtenant thereto, which include the rights to exclusive possession thereof. It follows therefore that the Plaintiff has established a case for the declaratory orders, permanent injunctive orders and eviction orders as against the 2nd Defendant in light of her admission to being on the suit property.
50. As regards mesne profits, it is trite that the same being one in the nature of special damages, must be specifically pleaded and proved. The burden of proof is on the Plaintiff to specifically plead and prove what profits he/she might have received in the ordinary diligence and use of the suit property. [See Court of Appeal case of Peter Mwangi Mbuthia & Another vs Samow Edin Osman [2014] eKLR].
51. In the circumstances, the Plaintiff has not specifically pleaded nor indeed proved any mesne profits. Vide its submissions under this head. The Plaintiff alludes to damages for trespass which is distinct from mesne profits. The same fails.
52. In the end, the Court finds that the Plaintiff has established his case on a balance of probabilities and proceeds to make the following final orders:
 - i. A declaration does hereby issue that the Plaintiff is the sole legal and beneficial owner of all those parcels of land known as Title Number Block 105/1235 and Title Number Block 105/1240, Nairobi.
 - ii. The 2nd Defendant is hereby ordered to grant vacant possession of the parcel of land known as Title Number Block 105/1235, Nairobi to the Plaintiff within 90 days hereof failure to which eviction orders shall issue.



- iii. A permanent injunction does hereby issue restraining the 1st Defendant and 4th Defendant from allocating and/or issuing a lease or any title document relating to the parcel known as Title Number Block 105/1240 to any other person other than the Plaintiff.
- iv. A mandatory injunction does hereby issue compelling the 1st Defendant and 4th Defendant to issue the Plaintiff with a lease and a certificate of lease for the parcels known as Title Number Block 105/1235 and Title Number Block 105/1240.
- v. The Plaintiff shall have the costs of the suit.

DATED, SIGNED AND DELIVERED IN NAIROBI VIRTUALLY THIS 27TH DAY OF MARCH, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Ombate for 2nd Defendant

Mr. Karugo for Plaintiff

Court Assistant: Tracy

