



Muchiri v Kenya Anglican Men’s Association Sacco & 3 others (Environment & Land Case 389 of 2017) [2023] KEELC 15730 (KLR) (15 February 2023) (Judgment)

Neutral citation: [2023] KEELC 15730 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 389 OF 2017
A NYUKURI, J
FEBRUARY 15, 2023**

BETWEEN

JAMES JOSIAH MUCHIRI PLAINTIFF

AND

KENYA ANGLICAN MEN’S ASSOCIATION SACCO 1ST DEFENDANT

JOHNSON KURIA MWANGI 2ND DEFENDANT

PATRICK MACHARIA 3RD DEFENDANT

AARON WANYAHORO 4TH DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff instituted this suit by way of plaint dated 13th July 2017, which was amended on 16th April 2018 and filed on 17th April 2018. He sought the following orders against the Defendants;
 - a. That the Plaintiff be recognized as the owner of plots represented by ballot numbers 121 and 122 in L.R. No. 8826/6.
 - b. That the Plaintiff be issued with title deed application forms for the two plots.
 - c. The Defendants to facilitate the issuance of title deeds to the Plaintiff.
 - d. Costs of this suit.
 - e. Interest on (d) above.
2. The Plaintiff averred that at all material times, the 1st Defendant was the registered owner of land known as L.R. No. 8826/6 measuring 39.65 Ha. (suit property). He also averred that the 2nd, 3rd and 4th



- Defendants were office bearers of the 1st Defendant (Chairman, Secretary and Treasurer respectively) a Sacco formed by men from the Anglican Church of Kenya.
3. He further stated that the 1st Defendant undertook to subdivide the suit property into half acre plots and sell the same to its members on first come first served basis by way of balloting. The Plaintiff stated that that he paid for two plots and upon balloting was allocated Plot Numbers 121 and 122 by the Defendant. He complained that when the 1st Defendant invited its members with ballots to fill the title deed application forms, they failed to invite the Plaintiff thereby denying him the right to property.
 4. Upon service, the 2nd, 3rd and 4th Defendants entered appearance by their Memorandum of Appearance dated 7th May 2018. Subsequently, the Defendants filed their statement of defence dated 10th May 2021 on 17th May 2021. They stated that the 1st Defendant was wrongly sued for lack of capacity to be sued as it is not a body corporate capable of being sued.
 5. The Defendants denied that the 1st Defendant was the registered proprietor of the suit property. They conceded that the 1st Defendant undertook to subdivide the suit property into ½ acre plots for sale to its members on first come first served basis using ballots as the basis of allocation. They denied that the Plaintiff was the member of the 1st Defendant and denied that he had paid for plot number 121 and 122. They maintained in the alternative and on without prejudice basis that if the plaintiff paid the money to the 1st Defendant for the process of purchase of plots, he paid like any other member but that the land was to be shared out on first come first served basis but on condition of production of a copy National Identity Card, 3 coloured passport photographs, certified copy of pin and execute a transfer instrument.
 6. The Defendants further agreed that the suit land was subdivided into 185 plots measuring ½ acre each to be shared against membership of 1000 people, hence the 1st Defendant specified that the date of submissions of documents was on 11th June 2016 and 2nd July 2016, and signing of transfer instruments by members on first come first served basis. That the Plaintiff failed to attend the meetings on the two aforesaid dates and failed to avail his documents and was therefore left out of the allotment process for failure to comply with the conditions set. They stated that the Plaintiffs contributions are available for refund upon request and that therefore the claim was malicious and dishonest.

Evidence

7. On the hearing date of 25th May 2022, PW1, James Josiah Muchiri, the Plaintiff herein testified. He adopted the contents of his witness statement dated 13th July 2017 as his evidence in chief. He testified that he was a member No 729 of the 1st Defendant and that in 2009, the 1st Defendant invited members to buy plots of land from them. That they sold half acre plots in the first project titled phase 1, where he balloted and was given plot numbers 140 and 145.
8. He testified that later, he was invited to a fill application form for processing of title documents for the two plots which were later issued to him. He stated that later the Defendant invited members to purchase more plots from them, that being Phase II. That they were half acre plots. That on completion of payment, he balloted and was awarded Plot Numbers 121 and 122. He stated that he was told to wait until all the plots were sold out before title documents could be issued to him.
9. That on 3rd of May, a Sacco representative inquired from him if he had purchased plots in Phase 2 as he needed to obtain title documents. That he requested for title application forms from the Defendants but they declined to comply. He stated that he was apprehensive that his plots may be given to someone else. He produced Ballots for Plot Numbers 121 and 122, receipts for payments to the 1st Sacco and letters from the Sacco as PExhibits 1, 2 and 3 respectively. That marked the close of the Plaintiff's case.



10. The Defendants who were aware of the hearing date and whose counsel was in court on the morning of the hearing date when the matter was given time allocation for the hearing of the matter, were not in court at the hearing and therefore their case was closed.
11. Parties were directed to file submission but none were filed.

Analysis and Determination

12. I have considered the pleadings and the evidence given by the Plaintiff. The only issue that arise for determination is whether the Plaintiff is owner of plots represented by ballot numbers 121 and 122 in L.R. No. 8826/6. The Plaintiff testified that members of the Sacco were purchasing the suit properties on a first come first served basis. He testified that he first paid for the two plots before he was allowed to ballot for the same which exercise led to him balloting for Plots No. 121 and 122. I have considered the defence which the Defendants alleged that plots were allocated on first come first served basis and that the same were 185 Plots. It therefore follows that payment and balloting would only be allowed to be done by the first 185 members. The Plaintiff's ballot were in respect of Plots No. 121 and 122. The Defendants have not presented any evidence to show that another member paid for and balloted the said plots earlier than the Plaintiff. It is not in dispute that the Defendants are yet to issue titles in respect of the said plots and yet they have failed to allow the Plaintiff to fill the title application documents. It is therefore my findings that the actions by the Defendants are without legal basis as there is no justification for their failure to process the title in the Plaintiff's name as they have conceded that the Plaintiff paid for the two plots and balloted for the same.
13. In the premises, I am satisfied that the Plaintiff has proved his case against the Defendants on the required standard and I enter judgment for the Plaintiff as against the Defendants as follows;
 - a. That the Plaintiff be and is hereby recognized as the owner of plots represented by Ballot Numbers 121 and 122 in L.R No. 8826/6.
 - b. The Defendants are ordered to issue the Plaintiff with title deed application forms and proceed to facilitate issuance of title deeds to the Plaintiffs for the two plots.
 - c. The costs of the suit shall be borne by the Defendants.
14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 15TH DAY OF FEBRUARY 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Ms Wakarima holding brief for Mr. Gachoka for the Plaintiff

No appearance for the Defendants

Josephine – Court Assistant

