



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 1125 OF 2016

MONICA ATIENO KAYONGO.....PLAINTIFF

VERSUS

EMBAKASI RANCHING.....DEFENDANT

JUDGEMENT

1. The Plaintiff claimed that by the sale agreement dated 12/7/2007, she and her late husband Eliud Otono Kayongo purchased four portions of land being plot numbers V4050, V4051, V4052 and V4053 at the consideration of Kshs. 540,000/= from the Defendant and that they were issued non-member certificates of plot ownership for the plots by the Defendant. Further, that the plots were pointed out to them by a surveyor and they executed transfer instruments to pave way for the Defendant to process the titles and hand them over to the Plaintiff and her late husband.

2. In 2007 the Plaintiff and her late husband developed the land and put up a two bedroomed house on the land. The Plaintiff claimed that from the time they developed the property up to July 2016, the Plaintiff enjoyed quiet possession of her premises. She received demand letters in July 2016 from persons claiming to be the owners of the land. On contacting the Defendant's officials, they informed her that the four parcels of land belonged to someone else and that the company was unable to assist her.

3. The Plaintiff averred that she had received information that the Defendant had been given the green light after the conclusion of **ELC Case No. 395 of 2011** to issue titles over the land known as Nairobi Block 105, which is where the Plaintiff's four parcels of land fall.

4. In the plaint filed in court on 15/9/2016, the Plaintiff sought a declaration that she was the lawful owner of parcel numbers Nairobi Block 105/4990, 4991, 4998 and 4999. She sought an order directing the Defendant to issue or facilitate the issuance of leasehold titles over these parcels of land to her. She sought a permanent injunction to restrain the Defendant from processing titles with respect to these parcels of land for any other person other than herself. Further, she sought a permanent injunction to restrain the Defendant or any person claiming through the Defendant from denying her title to the four parcels of land.

5. Despite being served with summons on 19/6/2017, the Defendant did not file a defence to the Plaintiff's claim. The hearing of the suit proceeded on 7/6/2021 when the Plaintiff testified. She produced a copy of the sale agreement which she and her late husband entered into with the Defendant on 12/7/2005. She produced a copy of cheque number 00746 for Kshs. 600,000/= drawn in favour of Omar Shenga, who acknowledged receipt of the purchase money on behalf of the Defendant. She produced the non-member certificates of plot ownership issued by the Defendant bearing serial numbers 008735 to 008738. The certificates are dated 11/7/2005.

6. The Plaintiff stated that through the Defendant's surveyor, the four plots were subdivided and allocated land reference numbers

Nairobi Block 105/4990, 105/4991, 105/4998 and 105/4999. She produced a copy of part of the map for Block 105 Embakasi Ranching showing the four parcels of land that she lays claim to. She also produced a copy of the letter 27/8/2007 vide which Mang'erere J & Co. Advocates informed her late husband that the subdivision scheme of L.R. No. 10904/2 had been approved and the leasehold titles were being processed and would be issued upon payment of the outstanding rates and surrender of the original title by Embakasi Ranching Limited. She also produced a copy of fee note prepared by the law firm.

7. She stated that she and her late husband requested the Defendant to issue titles for their parcels of land and that Embakasi Ranching wrote to the Commissioner of Lands on a day which is not legible confirming that the Plaintiff and her late husband had discharged all their liabilities to the Defendant and that the Defendant did not have any objection to the titles being processed in their names. The Defendant gave consent for the transfer of the four parcels of land to the Plaintiff and her husband. It also executed transfer of lease forms in their relating to Nairobi Block 105/4990, 4991, 4998 and 4999. However, the transfers were never registered at the lands office.

8. She confirmed that titles were not issued to them and that the Defendant had frustrated her attempts to obtain title documents over the four parcels of land. She stated that she made several visits to Defendant's offices in Utawala, Nairobi County and during one of those visits the Defendant asked her to pay Kshs 20,000/= for each plot to cater for survey and site visit fees. She purchased four bankers cheques for Kshs. 20,000/= each which were dated 22/8/2016 but when she presented the cheques to the Defendant it declined to receive payment while contending that the four parcels of land belonged to someone else and that it could not intervene in the matter. The cheques went stale. She produced photographs showing the permanent house erected on the plots.

9. On cross examination by the Defendant's advocate, she conceded that they paid the purchase price to the Defendant's Legal Officer who was receiving money on behalf of the company.

10. The Plaintiff filed submissions. She relied on the documents which she produced in evidence. She submitted that her husband passed away in 2011 leaving her as the sole proprietor of the four parcels of land. She maintained that the Defendant had failed to heed their requests to be issued with titles for their land. She maintained that the Defendant had no reason to withhold the titles or to deny her title.

11. The Plaintiff relied on Section 24 of the Land Registration Act which states that the registration of a person as the proprietor of land vests in that person the absolute ownership of that land. The court notes that the Plaintiff has not been registered as the owner of the four parcels of land which makes this Section as well as Section 26 of the same Act inapplicable to the Plaintiff's circumstances. The Plaintiff urged the court to issue the orders sought in the plaint.

12. The issue for determination is whether the Plaintiff has proved her claim to the four parcels of land on a balance of probabilities. The documents which the Plaintiff produced in evidence showed that she and her late husband entered into an agreement with the Defendant dated 12/7/2005 for the purchase of the four plots. The agreement was signed by the Defendant's representative. However the court notes that the cheque was paid to Omar Shenga but there is an acknowledgement of payment bearing the Defendant's stamp dated 12/7/2005.

13. The Defendant issued non-member plot ownership certificates for the plots to the Plaintiff and her husband on 11/7/2005. The Plaintiff produced part of the area map showing the new parcel numbers for the plots after the subdivision which could only have been carried out by the Defendant. The Plaintiff also produced documents showing that the Defendant commenced the process of transferring the plots to her and her late husband and gave consent. The Plaintiff produced photographs showing the house she erected on the land. However it is not clear whether the house sits on all the four plots or only one plot. If indeed the plots belonged to someone else as the Defendant contended when the Plaintiff went to pay the additional survey fees then the Defendant would not have sat back all this time when the Plaintiff and her husband took possession of the plots and erected a permanent structure on it. That other person would have asserted their title to the land with the necessary documents to disprove the Plaintiff's claim to the land.

14. The court is satisfied that the Plaintiff has proved her case on a balance of probabilities and grants prayers (a), (b), (c) and (d) of the plaint dated 14/9/2016. The Plaintiff is also awarded the costs of the suit.

DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF SEPTEMBER 2021.

K. BOR

JUDGE

In the presence of: -

Mr. E. Ligami holding brief for Mr. P. Lilan for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendant



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