



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maina v Kenya Electricity Generating Company & another (Environment & Land Case 1 of 2020) [2023] KEELC 18658 (KLR) (13 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18658 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE 1 OF 2020**

**JM MUTUNGI, J**

**JULY 13, 2023**

**BETWEEN**

**DICKSON MAINA ..... PLAINTIFF**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> DEFENDANT**

**KENYA ELECTRICITY GENERATING COMPANY ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff instituted the instant suit vide a plaint dated January 3, 2020 filed in court on January 6, 2020. The plaintiff claimed that he was the registered owner of land parcel number Kiine/Rukanga/1224 measuring 0.973 Ha having acquired the same on February 6, 2009. He claimed he had been utilising the land and has had quiet possession until June, 2019 when officers supposedly sent by the defendants came to the land and purported to carry on some survey on the land which the plaintiff resisted. The plaintiff, averred that on carrying out a search at the Lands Office on 21/6/2019, the official certificate of search indicated that the National Land Commission had on 2/1/2018 caused a restriction to be registered against his land prohibiting any dealings until acquisition claimed by Kengen was ascertained.
2. In the suit the plaintiff prayed for judgment against the defendants jointly and severally for:-
  1. Orders of permanent injunction restraining the defendants their servants, employees and agents and anyone claiming under them from entering, trespassing, or interfering in any way whatsoever with the plaintiff's land parcel No Kiine/Rukanga/122A or carrying out any activities thereon before compensating the Plaintiff adequately and the 2<sup>nd</sup> defendant be ordered to lift the restriction over the suit land forthwith.
  2. Costs and interest.



3. The 1<sup>st</sup> defendant filed a statement of defence dated february 19, 2020 through which it denied all the plaintiff's claims and allegations. The 1<sup>st</sup> defendant averred that it had wrongly been joined in the suit and that the suit against it did not disclose any reasonable cause of action. The 1<sup>st</sup> defendant denied it had anything to do with the alleged acquisition of the plaintiff's parcel of land and denied it had any interest in the plaintiff's said parcel of land.
4. The 2<sup>nd</sup> defendant filed a statement of defence dated May 27, 2022. The 2<sup>nd</sup> defendant averred that the restriction placed against the plaintiff's parcel of land was effected pursuant to the provisions of section 107 (1) & (5) of the Land Act which provisions mandate the Commission to seek the restriction of parcels of land whenever there is a legal process of compulsory acquisition of land. The 2<sup>nd</sup> defendant averred that the restriction on the plaintiff's land could only be removed if the acquiring body/agency gave such directions.
5. The matter came up for mention on several occasions for pretrial directions and on 21/7/2022 was fixed for hearing on 2/11/2022 when the 2<sup>nd</sup> defendant sought and was granted an adjournment as the 2<sup>nd</sup> defendant wished to consider whether to amend the defence in the light of new information that had apparently become available to the 2<sup>nd</sup> defendant. The court fixed the matter for pretrial directions on 8/3/2023 when both defendants failed to attend and at the plaintiff's request the suit was fixed for hearing on 18/5/2023 and the plaintiff was directed to serve the defendants with a hearing notice.
6. On 18/5/2023 only the plaintiff and his Advocate attended court and the defendants and their Advocates were no show. The affidavit of service sworn by the Process Server, one Julius Muchangi Gaturu filed in court on 17/5/2023 affirms that the defendants Advocates were both served with the hearing notice on April 5, 2023 which they duly acknowledged receipt by stamping the copy returned to court. The court having been satisfied that the defendants had been served with the hearing notice and were absent, allowed the plaintiff to proceed with the hearing exparte.
7. The plaintiff in his testimony adopted his witness statement dated 3/1/2020 and relied on the documents that he had filed together with the plaint. As per the witness statement the Plaintiff was the registered owner of land parcel No Kiine/Rukanga/1224 measuring 0.973 Ha. The Plaintiff in his bundle of documents exhibited a copy of certificate of official search dated December 11, 2019 which showed he was registered as owner on 6/2/2009 and was issued a title deed on December 11, 2009. The search additionally indicated a restriction was registered against the title on 2/1/2018 with the following details – "Restriction no dealings until acquisition claimed by Kengen is ascertained Ref NLC 8/20/4/1 of 20/12/2017 by NLC."
8. The plaintiff explained that he had enjoyed quiet possession and occupation of the suit land since he acquired the land and had planted over 10,000 Blue gum trees which had been on the land for 10 years. He however stated he was alerted by a neighbour sometime in June 2019 regarding some strangers who were on his land and upon rushing to the scene he found people who were purportedly carrying out survey activities on his land and wanted him to sign some Mutation Forms which he declined to do.
9. According to the plaintiff the strangers who were on his land wanted to hive off a portion of his land measuring one and half Acres in favour of Kengen. The plaintiff explained his attempts to seek clarification from the defendants yielded no results precipitating the filing of the present suit seeking injunctive relief and the lifting of the restriction registered against his title.
10. It is not disputed that the plaintiff is the registered proprietor of the suit property. The exhibited copy of certificate of official search affirms that position. The plaintiff has been the registered owner since 2009 and has been utilising the property. The 1<sup>st</sup> defendant Kengen through their filed defence affirm they have no interest in the suit property and were not involved in the acts complained of by the plaintiff.



Although the 2<sup>nd</sup> defendant, National Land Commission in their defence aver that the plaintiff's land formed part of what had been compulsorily acquired, they provide no details and/or particulars of the alleged acquisition. No witness of the 2<sup>nd</sup> defendant filed a witness statement and neither were any documents filed by the 2<sup>nd</sup> defendant to support the defence.

11. The 1<sup>st</sup> defendant filed a bundle of documents as per the list dated February 19, 2020 but no witness made a witness statement. Though the documents show there could have been an intention to acquire some land, there is no evidence to show whether the intention was actualised and if it was, how the Plaintiff's parcel of land was affected. The 1<sup>st</sup> defendant annexed a letter dated July 11, 1984 by the Commissioner of Lands to the Land Registrar, Kirinyaga setting out properties which stood to be affected if the compulsory acquisition exercise went ahead and sought the affected lands to be caveated. The 1<sup>st</sup> defendant annexed a green card for title No Kiine/Rukanga/642 out of which the plaintiff's land parcel was subdivided. As per the green card this parcel of land was closed on subdivision on October 14, 1980 and therefore was not available to be caveated. Did the acquisition actually happen and if so who received the compensation? That question would only have been answered by the 2<sup>nd</sup> defendant.
12. On the evidence, there is no credible evidence available that the plaintiff's land parcel was compulsorily acquired for any purpose. The plaintiff acquired title to his land in 2009 and as at that time there was no notice of any acquisition. In my view he acquired an absolute title and no evidence was furnished to rebut his evidence that he is the absolute proprietor of the suit land and he is as such entitled to enjoy all the rights vested on a proprietor of land on registration of title as provided under section 24, 25 and 26 of the [Land Registration Act, 2012](#).
13. On the issue whether the restriction registered against the plaintiff's land title should be lifted, it is my view that the defendants did not demonstrate and/or adduce any evidence to justify the placing of the restriction. As I have observed elsewhere in this judgment, there is no credible evidence to show there was any compulsory acquisition and even if there was any such acquisition, that the plaintiff had notice of it. A restriction is an encumbrance on somebody's title and the person placing or causing a restriction to be placed by the Land Registrar must take action within a reasonable period to establish the interest that he or she has in the property against which a restriction is placed. A restriction does not confer ownership rights on the person who causes a restriction to be registered. Such a person must move the court or other tribunal or body with jurisdiction to have the interest they may have on the property adjudicated. Where no such action is initiated, the party affected by the registration can apply to have the restriction lifted.
14. In the instant case the 2<sup>nd</sup> defendant was obligated to demonstrate why the restriction registered against the plaintiff's title should not be lifted. The 2<sup>nd</sup> defendant in my view has not justified the placing of the restriction and has not shown why the same should not be lifted.
15. In the premises I am satisfied the plaintiff has proved his case on a balance of probabilities and is entitled to judgment. I enter judgment in favour of the plaintiff and make the following final orders:-
  1. An order of permanent injunction restraining the defendants, their servants, agents and/or any one claiming through them from trespassing, entering onto, or in any manner whatsoever interfering with the plaintiff's land parcel No Kiine/Rukanga/1224.
  2. The Land Registrar Kirinyaga is directed to lift the restriction registered against land parcel No Kiine/Rukanga/1224 on 2/1/2018.
  3. The parties shall bear their own costs of the suit.



**JUDGMENT DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 13<sup>TH</sup> DAY OF JULY 2023.**

**J. M. MUTUNGI**

**JUDGE**

