



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ELC CASE NO 372 OF 2012

MULTI-TRACK

DAVID NJOGU KARANJAPLAINTIFF

VERSUS

THE COMMISSIONER OF LANDS &

3 OTHERS.....DEFENDANTS.

JUDGEMENT.

The Plaintiff herein **David Njogu Karanja** brought this claim against the Defendants herein, 1st defendant the Commissioner of Lands, 2nd Defendant, the Principal Registrar of Title, 3rd Defendant, Njuguna Ngunjiri and 4th Defendant Agnes Mumbi Ngunjiri for orders that:-

- a. A declaration that **Plots No. 513 and 514 Ruiru Town** previously known as '**A**' and '**B**' belong to the Plaintiff.
- b. An order directing the 1st and 2nd Defendants to cancel and /or revoke the Titles issued to 3rd and 4th Defendants in respect to the **Plots No.513 and 514 Ruiru town** previously known as '**A**' and '**B**' **Ruiru township**.
- c. Cost of the suit.

2. The Plaintiff in his Complaint has alleged that since 1954, he has occupied these plots known as number **513 and 514** in Ruiru. He further alleged that he has occupied these plots together with his wife, children and now grandchildren. He further averred in the complaint that, in the late 1990, the 1st and 2nd Defendants issued title deeds to 3rd and 4th Defendants for these plots. The Plaintiff contended that this allocation was un-procedural irregular and illegal and was done fraudulently. This was done without consideration to the plaintiff's interest and the commissioner of land was misled as all material facts were not disclosed.

Due to the said error, the 1st Defendant attempted to recall the title but in vain. He further contended that the 3rd and 4th Defendants have severally attempted to eject him but in vain. Plaintiff further averred that if Defendants are allowed to continue with their acts, then the Plaintiff will be internally displaced and his constitutional right will have been infringed.

3. The Defendants herein did not Enter Appearance. An interlocutory Judgement was entered against the 3rd and 4th Defendant herein. An affidavit of service dated 23rd July, 2012 showed that the

Summons to Enter Appearance were served on Agnes Mumbi Ngunjiri on 17/7/2012 . The said Agnes Mumbi Ngunjiri is allegedly the wife of 3rd Defendant. The 3rd and 4th Defendant did not enter appearance. Interlocutory Judgement was entered against them on 3/10/2012. The case was thereafter set down for formal proof on 10/4/2013.

4. However, the Court has noted that there was no evidence that 1st and 2nd Defendants herein were served with summons to Enter Appearance. Interlocutory Judgement was not entered against them. Without evidence of service of summons, the court cannot find and hold that 1st and 2nd Defendant were served with summons to enter appearance and they failed to do so.

I have considered the plaint. I have noted that the orders sought are directed to the 1st and 2nd Defendants. If the 1st and 2nd Defendants were not served with summons to enter appearance, then the Court cannot make Orders against them without allowing them an opportunity to be heard. That would amount to be condemned unheard.

Though the article 159(1) (d) of the Constitution mandates the *Court to administer justice without undue regard to technicalities and procedure*, failure to serve summons to enter appearance goes to the root of the case. That omission is fatal to the Plaintiff's case.

The orders sought by the Plaintiff herein have a bearing on the 3rd and 4th Defendants. However, they are directed to 1st and 2nd Defendants. The Court cannot therefore issue the sought orders in the absence of evidence that the 1st and 2nd Defendants were served with Summons to enter Appearance.

5. Having found that Summons to Enter Appearance were not served on the 1st and 2nd Defendants. I find that, the said omission was fatal to the Plaintiff's case. The Court consequently dismisses the Plaintiff's case herein entirely with no orders as to costs.

Dated, Signed and delivered this 14th day of June, 2013.

28 days Right of Appeal

L.N. GACHERU

In the Presence of:-

Ms Atieno holding brief Mutiso for the Plaintiff

None attendance for the Defendant

AnneCourt Clerk

L.N. GACHERU