



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 486 OF 2011

PETER NJUGUNA GACHIE PLAINTIFF

VERSUS

ALICE KEMUNTO ONDIEKI1ST DEFENDANT

KENNEDY OBWAYA ONSONGO2ND DEFENDANT

JUDGMENT

The Plaintiff filed suit by his Plaint dated 15th September 2011 wherein he sought for judgment to be entered against the Defendants as follows:

1. That a temporary injunction be issued against the Defendants, by themselves, their servants, agents and/or employees from building or continuing to build, erecting or continuing to erect structures, encroaching, entering, remaining or in any other manner whatsoever trespassing upon and/or dealing with parcel known as Nairobi Block 62/259 (hereinafter referred to as the “Suit Property”);
2. That a permanent injunction be issued against the Defendants, by themselves, their servants, agents and/or employees from building or continuing to build, erecting or continuing to erect structures, encroaching, entering, remaining or in any other manner whatsoever trespassing upon and/or dealing with the Suit Property;
3. That a mandatory injunction compelling the Defendants to demolish the structure erected on the Suit Property; and,
4. Costs of this suit.

The Plaintiff was allocated the Suit Property by the City Council of Nairobi where he lived together with his family until 2008 when as a result of the chaos arising from the post-election violence he together with his family moved out and went to live in Kikuyu. The Plaintiff had built 7 houses on the Suit Property which were rented by tenants. Those tenants also moved out as a result of the post-election violence. When the violence stopped, he got new tenants and a caretaker to take care of the Suit Property. In June 2008, the 2nd Defendant asked the Plaintiff for permission to pass his sewage through the Suit Property. The Plaintiff conceded his request. However, on 27th June 2009, the 2nd Defendant ordered his employees who were constructing on his land parcel known as Nairobi Block 62/258 to demolish the Plaintiff’s rental structures which had been erected on the Suit Property without any justifiable cause or reason. The 2nd Defendant went ahead to erect a storied building on the Suit Property.

PW2 was the Sub-Chief in Kianda Olympic Sub-location. He corroborated the Plaintiff’s evidence that the 2nd Defendant demolished the Plaintiff’s structures on the Suit Property on 27th June 2009. He

testified that though he requested the 2nd Defendant to stop doing so, his request remained unheeded. PW3 was an elder at Kibera Olympic. He testified that he also witnessed the demolition of the Plaintiff's structures on the Suit Property by the 2nd Defendant.

Section 24 (a) of the Land Registration Act provides as follows:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”

Section 24(b) of the same statute provides that:

“the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or expressed agreements, liabilities or incidents of the lease”.

Further to that, section 26(1) of the same statute provides as follows:

“The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... 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...”

The Plaintiff produced in evidence his Certificate of Lease in respect of the Suit Property. Going by the provisions of the law cited above, this court is bound to find that the Plaintiff is the absolute and indefeasible owner of the Suit Property. He is therefore entitled to exercise all rights and privileges belonging to the Suit Property to the exclusion of everybody else. It is quite shocking that the Defendant actually moved into the Suit Property and demolished the Plaintiff's structures thereon and completely excluded the Plaintiff from exercising his ownership rights. This is clearly a breach of the law and of the Plaintiff's proprietary rights over the Suit Property and should not be allowed to continue.

Accordingly, this court finds that the Plaintiff has proved his case on a balance of probabilities. This court therefore enters judgment in favour of the Plaintiff as prayed in the Plaint. Costs are also awarded to the Plaintiff.

It is so ordered.

SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JULY 2013

MARY M. GITUMBI

JUDGE