



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ENVIRONMENTAL & LAND DIVISION**

**ELC CASE NO. 172 OF 2011**

**SAMUEL NJUNGE MUINAMIA .....PLAINTIFF**

**VERSUS**

**COUNTY COUNCIL OF KIAMBU .....1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR KIAMBU .....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

The plaintiff herein Samuel Njunge Muinamia has brought this suit against the Defendants for orders that:-

- i. That the caution registered against LR No. KARAI/LUSIGETTI/T. 1837, 1838,1839 and 1840 be removed.**
- ii. General damages for wrongful inhibiting the plaintiffs parcel of land.**
- iii. Interest on (ii) above**
- iv. Costs of this case.**

The plaintiff alleged in the plaint that he is the registered proprietor of all that parcel of land known as LR KARAI/LUSIGETTI/T. 1804. He further stated that the 1<sup>st</sup> Defendant caused the 2<sup>nd</sup> Defendant to register a caution against the said parcel of land on the 20<sup>th</sup> May, 2001 which was subsequently removed on 19<sup>th</sup> October, 2009. That upon removal of the said caution by the 2<sup>nd</sup> Defendant, the Plaintiff sub divided his parcel of land into four portions, LR KARAI/LUSIGETTI/T. 1837 – 1840, with the sole intention of developing the same as the owner. He thus obtained four separate titles on or about 15<sup>th</sup> March, 2010. Plaintiff further averred that on or about 26<sup>th</sup> March, 2010, the 1<sup>st</sup> Defendant caused the 2<sup>nd</sup> Defendant to register fresh cautions against the plaintiff's said titles for no apparent reason. That the said cautions over the plaintiff parcels of land aforesaid have greatly inconvenienced the plaintiff as he cannot freely enjoy quiet possession of his parcels of land. The plaintiff therefore asked the court to allow his claim.

The 1<sup>st</sup> Defendant, County Council of Kiambu filed its defence on 8<sup>th</sup> June, 2011. The plaintiff filed a Notice of withdrawal of suit against the 1<sup>st</sup> Defendant. The same was allowed on 2<sup>nd</sup> November, 2011 with no orders as to costs.

The 2<sup>nd</sup> Defendant, the District Land Registrar Kiambu, did not enter appearance. The matter proceeded for hearing ex-parte on 3<sup>rd</sup> June, 2012. The Plaintiff gave evidence and reiterated the contents of his

plaint. His exhibits are in the list of documents.

The court has considered the available evidence and the written submissions herein. It is not in doubt from the exhibits that indeed the plaintiff is the registered owner of the suit parcels of land. There is also no doubt that the 2<sup>nd</sup> Defendant has placed cautions on the plaintiff's said parcels of land. The 2<sup>nd</sup> Defendant did not enter appearance or file Defence. The plaintiff's claim therefore is uncontroverted. I will rely on the plaintiff authority cited in the submissions:- **FLORENCE MUTONO MUINDI V MBEVI WAMBUA, HCCC NO. 54 OF 2001 eKLR** where Justice Wendoh held that

**“the Defendant did not file any Defence. The plaintiff has shown that she is the registered owner of the plot in question. It is to the exclusion of any other and without any evidence to the contrary, she is entitled to the order sought in the plaint and the defendant is therefore restrained from entering or interfering with plaintiff plot.”**

The plaintiff herein is the registered owner of the four parcels of land. 2<sup>nd</sup> Defendant has not filed Defence to offer explanation as to why it has lodged the said cautions. The 2<sup>nd</sup> Defendant having not explained the reasons for the lodging of the cautions. Should remove the same accordingly on all the four parcels of land.

The court allows the plaintiffs prayers as stated in the plaint. In prayer No. (ii) the court awards the plaintiff general damages of kshs.100,000/= for wrongful inhibiting the plaintiff's parcel of Land with interest at court's rate. He is also entitled to costs.

It is so ordered

Dated, signed and delivered at Nairobi this 20<sup>th</sup> day of August, 2013

**L. N GACHERU**

**JUDGE**