

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 167 of 2009

KENNETH KARIUKI IRERI.....PLAINTIFF

VESUS

TITUS KITHINJI NDICHI.....DEFENDANT

R U L I N G

The Applicant in the Application dated 22.03.2010 one Titus Kithinji Ndichi is the defendant in the main suit. The Respondent herein is the Plaintiff. The 2 of them have laid claim to **Land Parcel No. NTHAWA/RIANDU/1298** which is the subject matter in this case.

According to the Applicant, the land in question along with several other plots was adjudicated upon and allocated to the owners after the Adjudication process was completed.

According to the letter dated 23rd July 1987, by the Director of Land Adjudication, the Appeal before the Minister was allowed and the parcels of land were to be registered as per the list in the letter to the Director of Land Adjudication and Settlement dated 23rd April, 1987 (marked "TKN2").

According to that schedule, plot No.1298 was to be registered in the names of **TITUS KITHINJI NDICI** - the applicant herein.

Annexure 'TKN1' which is a copy of the Green Card shows the said Registration was effected and **plot No. NTHAWA/RIANDU/1298** was registered in the name of **TITUS KITHINJI NDICI** on 9.02.89.

The same therefore appears to have been registered in the name of **NTHIGA MWARIRE** on 18.10.93 but the circumstances leading to that transfer have not been explained.

In his replying Affidavit dated 14.06.2010, the Respondent has not explained how he came to be registered as the owner of the parcel in question. All he says is that the Applicant is the registered owner of **Parcel No. NTHAWA/RIANDU/1294**. He has annexed a certificate of search to that effect but the said certificate is not very helpful as on its face, it does not show the history of the said parcel and how it ended up in the Applicant's names. A court order referred to in one of the documents attached to the Respondent's affidavit - but not marked as an annexure is not annexed and it is not possible for this court to make an inference as to what it was all about. The counterclaim by the Applicant herein in the main suit is to the effect that the said transfer was fraudulent. I am not able to make any finding on that claim until evidence is called in the main suit.

What I can say for now however, on the strength of the material before me is that the plot in question was

originally transferred to the Appellant herein following the exhaustion of the Adjudication process. How the list was changed or amended is not clear at this point and will be an issue for determination in the main suit. What is clear at this point however is that the Applicant moved into the plot after the same was transferred to him. He says he only became aware that the land had been transferred to the Plaintiff/Respondent on 18/8/09 after he was served with notice to vacate. He was therefore undeniably been in possession and occupation of the said parcel all along. He has established a prima facie case with a probability of success as required by law. He is also in occupation and the balance of convenience tilts in his favour. He should not therefore be evicted from the land in question until the main suit is heard and determined. He should also not be restrained from utilizing his land which he must have developed for all those years in any manner he deems prudent.

The application dated 22.03.2010 is therefore allowed with costs to the Applicant

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 29th day of September 2010.

In presence of :- Mr. Kariuki for Okwaro for Applicant and Respondent in person.