



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Suit 173 of 2003**

**GODFREY GITHINJI KAMIRI.....PLAINTIFF**  
**VERSUS**  
**CITY COUNCIL OF NAIROBI.....DEFENDANT**

**J U D G M E N T**

1. Godfrey Githinji Kamiri is the plaintiff in this suit. He has sued the City Council of Nairobi, a local authority established under the Local Authorities Act Cap 265 of the Laws of Kenya. The plaintiff claims that he is the bonafide purchaser of property known as LR 209/13539/79 (hereinafter referred to as the suit property), from one John Njenga Mungai, who in turn acquired the property from the defendant at a consideration of Kshs.1.1 million. The plaintiff contends that he took possession of the suit property and has been paying all the annual rates. The plaintiff was however surprised when a notice to vacate dated 17<sup>th</sup> February, 2003 addressed to one Walter K. Adel was delivered to the suit property. The notice which purported to be a notice on the tenant of the premises one Mr. Adel, claimed that the tenant was in arrears of rent to the tune of Kshs.91,650/= and was to be evicted on 25<sup>th</sup> February, 2003.

2. The plaintiff being apprehensive that his rights of ownership of the suit property will be violated has come to this court seeking:

- (i) A declaration that the plaintiff is the lawful registered owner of all suit property.
- (ii) A declaration that the defendant's purported notice to nullify the sale and transfer of the suit property to the plaintiff is illegal, null and void.
- (iii) A permanent injunction restraining the defendant, its agents and/or servants from evicting the plaintiff and/or interfering with the plaintiff's ownership and use of the suit property.
- (iv) Costs of this suit.
- (v) Such other or further relief as this honorable court may deem fit to grant.

3. In his evidence before this court, the plaintiff explained that he bought the suit property from one John Njenga Mungai, who was the holder of a leasehold interest from the defendant. The plaintiff produced a copy of an agreement of lease of the suit property between the defendant and John Njenga Mungai, a lease document dated 9<sup>th</sup> September, showing that the defendant had transferred its leasehold interest in the suit property to John Njenga Mungai. A transfer of lease dated 14<sup>th</sup> May, 2002 from John Njenga Mungai to the plaintiff showing that John Njenga Mungai had transferred his leasehold interest to the plaintiff.

4. The plaintiff explained that consent of the defendant was obtained for the transfer of the lease from John Njenga Mungai to the plaintiff, and the transfer documents duly signed by the defendant's Town Clerk signifying the defendant's consent. The plaintiff denied any knowledge of Walter K. Adel, to whom the tenancy notice was addressed. Upon receipt of the notice the plaintiff filed this suit and

obtained an order of injunction restraining the defendant from evicting the plaintiff from the suit property. While the order of injunction was still in force, the plaintiff was forcefully evicted from the suit premises. The plaintiff's advocate went to see the Deputy Town Clerk of the defendant, as a result of which the plaintiff was reinstated into the suit property on condition that he pays the alleged rent arrears and the monthly rent. The plaintiff had therefore to pay the rent in the name of Walter Adel as that was the name which was in the defendant's record. The plaintiff therefore urged the court to give judgment in his favour.

5. The defendant filed a defence denying the plaintiff's claim. In particular the defendant denied that John Njenga Mungai was allocated the suit premises or that he had any good title capable of being passed to the plaintiff. The defendant maintained that it still owned the suit property and therefore the plaintiff was liable to pay rent. The defendant did not call any evidence during the trial. However, both the plaintiff's counsel and the defence counsel filed written submissions.

6. For the plaintiff it was submitted that the defence filed by the defendant was irregularly before the court, as it was filed in contravention of a court order, which required a defence to be filed within 15 days from the date of service of summons on the defendant. It was therefore argued that the defence should be struck out from the court record. The court was urged to find that there was a duly executed lease dated 9<sup>th</sup> September, 1999 executed by the defendant in favour of John Njenga Mungai, and registered in the Lands Registry at Nairobi. It was further submitted that the lease conferred a good title upon John Njenga Mungai, capable of being transferred, and that the defendant gave its consent for a transfer of the suit property by John Njenga Mungai to the plaintiff. The court was therefore urged to give judgment in favour of the plaintiff as prayed in the plaint.

7. For the defendant, it was submitted that the plaintiff was unable to state the date or time he was evicted from the suit property. Nor did the plaintiff sue John Njenga Mungai who sold the suit property to him, or call that person as a witness to testify on his behalf. The defendant maintained that the plaintiff does not stay in the suit property nor was he evicted from the suit property. It was argued that there was no evidence that the plaintiff pays rates or rents or that the defendant recognizes him as the owner. The court was therefore urged to dismiss the plaintiff's suit.

8. I have carefully considered the pleadings, the court record and the evidence which was adduced before me. From the court record it is evident that on the 17<sup>th</sup> June, 2004, the court directed that the defendant be served with summons within a period of 30 days, and that upon service of summons the defendant do file a defence within 15 days. The record reveals that the summons to enter appearance was served on the defendant on 28<sup>th</sup> June, 2004. Therefore the defence ought to have been filed with 15 days from 28<sup>th</sup> June, 2004. However, no defence was filed until 2<sup>nd</sup> June, 2006. No leave having been obtained from the court for the filing of the defence out of time, the defence before the court was filed irregularly and is accordingly struck out.

9. But even assuming that the defence was properly on record, the plaintiff has adduced evidence that he acquired a leasehold interest in the suit property from John Njenga Mungai, who was the holder of a leasehold interest from the defendant. The plaintiff has produced appropriate transfer documents duly signed by the defendant for the transfer of the leasehold from the defendant to John Njenga Mungai, and from John Njenga Mungai to the plaintiff. Although these documents were denied by the defendant, there is nothing to show that the documents are not genuine. Nor has the defendant called any evidence in support of its defence that the plaintiff has no good title to the suit property, or that the suit property is leased to Walter Adel or someone else. Further, the defendant has not offered any evidence in support of its contention that it did not give any consent for the transfer of the leasehold interest from John Njenga Mungai to the plaintiff.

10. I find that the plaintiff has proved his case on a balance of probability and would therefore reject the defence and enter judgment in favour of the plaintiff as prayed.

**Dated and delivered this 15<sup>th</sup> day of October, 2010**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Ms Ndumia H/B for the plaintiff

Advocate for the defendant absent

Kosgei - Court clerk