

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC CIVIL CASE NO.2329 OF 2007

ANDREW GATU GICHIA.....PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI.....DEFENDANT

JUDGMENT

The plaintiff Andrew Gatu Gichia brought this suit against the defendant alleging that the defendant's officers had trespassed onto his property known as Nairobi Block 107/1121 and destroyed his chain link fence and subdivided his said property into small parcels with the purpose of selling the same to third parties.

The defendant's officers also are said to have trespassed on the said property and placed beacons thereon. The position of the defendant is that the plaintiff's allegations were fraudulent and that he should be evicted. As a result, the plaintiff's claim is for an injunction to restrain the defendant or its agent from interfering with the plaintiff's quiet possession.

Alongside the plaint, the plaintiff filed an application by way of Chamber Summons seeking injunction orders in line with the prayers in the plaint. Interim orders were granted by Nyamu J. (as he then was) which orders have remained in place to date. The defendant was served with the pleadings herein but other than filing a replying affidavit sworn by M.N. Ngethe on 8th January, 2008, no appearance or defence were filed in this matter.

It is standard procedure that the only rejoinder to a plaint is by way of a defence which in this matter is lacking. Surprisingly, there is on record a statement of agreed issues signed by both counsel on record which would appear to capture a defence which however is not on record.

The plaintiff gave evidence that he bought the suit property from one Francis Kagunda Mwangi for valuable consideration. He produced a Sale Agreement dated 23rd January, 2006 followed by a transfer of lease dated 12th September, 2006 from Francis Kagunda Mwangi to him. It is indicated on the said transfer of lease that, the plaintiff paid a sum of Kshs.1,350,000/=. At the reverse of the said transfer of lease, there is a consent endorsed for the said transfer and signed by the town clerk for and on behalf of the defendant.

Subsequently, the plaintiff was issued with a Certificate of Lease dated 5th October, 2006. It is the plaintiff's case that, he holds a valid title in respect of the suit property supported by the documents aforesaid. Other than his evidence in that regard, he called one Susan Vusha Muhonja PW4, a Land Registration Officer with the Ministry of Lands who produced a certified copy of the Green Card relating to this property as exhibit 11(a) and (b). The said exhibit contains a chronology of entries resting with the plaintiff's title to the said parcel of land. Indeed, the certificate of search dated 9th March, 2010 produced in evidence in these proceedings, confirms the plaintiff's proprietorship. Under Section 28 of the Registered Land Act the plaintiff's title is absolute and indefeasible.

I observed earlier that, the defendant did not file any defence to this claim. The plaintiff's evidence and the exhibits he has produced therefore remain uncontroverted. And I have no doubt that he told the court

the truth going by the demeanour he exhibited in court. He has, in my judgment, proved that he is entitled to the order of permanent injunction against the defendant as prayed in the plaint. His evidence that the defendant's agent destroyed his fence has not been controverted. He produced a receipt for Kshs.2,000/= being the cost thereof and in the absence of any rejoinder he is entitled to the said sum.

Other than alleging that the defendant's officers moved on to the said premises, he has not shown that he suffered any loss as a result of being locked out of the said premises. I am therefore not able to award any substantial damages for trespass save to limit the same to Kshs.10,000/=.

Accordingly, I give judgment for the plaintiff against the defendant for a permanent injunction as prayed in the plaint plus Kshs.12,000/- general damages. The plaintiff shall have the costs of the suit plus interest at courts rates. Orders accordingly.

Dated, signed and delivered at Nairobi this 22nd day of November, 2010.

A. MBOGHOLI MSAGHA

JUDGE