

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

Civil Case 18 of 2004

EPHANTUS NYAGA MBIRUTU.....PLAINTIFF

VERSUS

ENGELUS NDAMBIRI.....DEFENDANT

JUDGMENT

In this case the plaintiff sued the defendant to recover a parcel of land known as Gichugu/Settlement Scheme/736 which is in the name of Defendant. The plaintiff alleged that the said parcel of land was part of plot No. Gichugu/Settlement/Scheme/51. The plaintiff alleged that he was the owner of Gichugu/Settlement/Scheme/51. Evidence of green card regarding this parcel of land shows that on 6/2/58 the proprietor was the Trust Land Board which is now called County Council of Kirinyaga and the land was subdivided into two plots numbered Gichugu/Settlement Scheme/735 and 736 registered in the name of Kirinyaga County Council. On 16/2/1999 the proprietor of plot No. 735 was Ephantus Nyaga Mbirutu, the plaintiff. The other portion number 736 was on 11/3/1977 registered in the name of Kirinyaga County Council and on 22/11/79 the proprietor was Angelus Ndambiri Njeru the defendant. The plaintiff produced Exhibit 1 a letter dated 16/9/97 where his name is listed for allocation of leaseholds land parcel No. Gichugu/Settlement/Scheme/51. It is to be noted that by 1997 the land had already been subdivided as above stated. Plaintiffs Exhibit 2 alludes to the reversing the decision to allocate the suit land in favour of Defendant. "The Council feels that the allocation was rather dubious since Mr. Ndambiri was not the registered owner of the land at Difathas but was only on the process of buying the land" This letter was dated 8/11/1982 by which time the defendant Exhibits 1, 2, and 3 were already effected. What is clear is that the suit land Gichugu/Settlement/Scheme/51 was originally registered in the name of the council. The Council is not a party in this suit. The Council appears to have subdivided the parcel of land into two portions. One portion 735 was transferred to the plaintiff who was landless and a long serving Ex-employee of the council. The other portion 736 was allocated by the council to the defendant who alleges that there was an exchange of his land at Difathas market which the council wished to use for establishing Difatha market. From the evidence, the land was registered in 1958 in the name of the council. It was reserved for Water Department Project. The plaintiff was not able to show any document of title to land issued to him by the council. The two exhibits (letters 16/9/97 and 8/11/1982) are not documents of title. However, the plaintiff retains plot No. 735 which he was allocated on his application to the council by the council in the usual process. The plaintiff alleged fraud against the defendant but no evidence was adduced by the plaintiff to proof the same. The subdivision was processed by the council and the plaintiff was given public land free.

I have considered the plaintiff's case and I find no evidence to warrant the orders prayed for in the plaint. The suit is therefore dismissed with costs to the Defendant.

It is so ordered

Dated this 8th April, 2008.

J. N. KHAMINWA

JUDGE

8/4/2008

Khaminwa– Judge

Njue – Clerk

Njeru Nyaga HB for Okwaro

Read in open court.

J. N. KHAMINWA

JUDGE