



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 520 of 2003

DAVID GICHUHI MUKUNJURA.....PLAINTIFF

VERSUS

COUNCILLOR MWANIKI MBOGO.....DEFENDANT

JUDGMENT

This suit was filed on 30th May, 2003 and was initially against one Councilor Mwaninki Mbogo as will be seen from the Plaintiff's undated Plaint filed on that date. By a consent recorded on 25th May 2004 the said Plaint was amended to strike out the said Mr. Mbogo from the suit and substitute him with 10 other Defendant against whom the Plaintiff claims the following reliefs:

- (a) A permanent injunction restraining the Defendants by (themselves), agents servants, or employees from erecting or building any structure whatsoever or otherwise dealing with suit property number 36139 at Dagoretti Riruta.
- (b) A permanent injunction restraining the Defendants by themselves, agents, servants, or employees from entering upon, remaining upon, subdividing, fencing, erecting or building any structure whatsoever, or otherwise dealing with suit property namely Residential Plot No. 36139/A/V/82 Dagoretti Riruta
- (c) A permanent injunction compelling the Defendants by themselves, agents servants or employees to vacate the suit land.
- (d) General damages
- (e) Costs of the suit to be provided for.

The Plaintiff has represented himself throughout the proceedings and failed to secure interim orders in terms of the Original Plaint when his Chamber Summons of 29th May 2003 was dismissed, the Court having found that the Plaintiff's letter of allotment was not conclusive evidence of his ownership of the suit premises and did not therefore have an enforceable title to the same, for him to be considered as having demonstrated a prima facie case for which an injunction could issue. Trespass by the original Defendant was also not proven. My perusal of the record clearly suggests that the dismissal of the application against the original Defendant must have influenced the Plaintiff to amend his plaint.

When this matter was called for hearing on 13th March 2006, the Plaintiff appeared in person and sought to proceed ex parte on the ground that he had taken the date and had served the Defendant's advocate. He also told the court that although the Defendant were represented by an advocate they had

filed no defence. The court entered judgment and ordered that the matter be heard at 11.45 a.m.

The Plaintiff alone testified and did not call any independent or additional evidence. He produced a bundle of documents totaling 15 in number and submitted that the same were

“intended to show that the plot is mine and not a road reserve as claimed by the Defendant.”

He also submitted that

“The Defendants did not file any defence to the suit so my claim is not challenged.”

The Plaintiff further submitted that save for the 3rd, 4th and 5th Defendants, the rest had vacated the land and he now wished that judgment be entered against these three.

The Plaintiffs claim is that the Defendants had without the Plaintiff's consent and without legal justification or reason, entered upon the suit premises and forcefully taken possession of the same and proceeded to erect buildings on the same. He contends that his efforts and demands to have them cease trespassing on the suit land had been unsuccessful hence his decision to enlist the court's assistance.

My perusal of the record shows that a Defence was filed on behalf of the Defendants on 8th June 2004 by M/S Njage Wanjeru and Company Advocates. In it the Defendants denied the Plaintiffs claim to ownership and averred that the suit land was public utility land. They admit in paragraph 4 of the Defence being in occupation of the suit premises

“for over thirty (30) years utilizing the same for multifarious Commercial and Social activities as a matter of right...”

They also admit in paragraph 5 of the Defence having defied the Plaintiffs threat to vacate on the ground that the Plaintiff had no private right or superior interest over the suit premises. That was in June 2004. At the date of the hearing counsel for the Defendants filed an application for leave to cease acting, clearly demonstrating a lack of interest in the suit. In the Ruling of 21.01.04, the court found that the Plaintiff did not have an enforceable title to the property. From the documents submitted in evidence herein, it is clear that the position has not changed and the plaintiff still has no Title to the suit premises as would confer upon him the rights and privileges of a registered proprietor under Section 27 and 28 of the Registered Land Act. Save for the letter of Allotment, Land Rent Notices dated 28th February 2003 and 29th June 2006, receipts for payment and a copy of a letter dated 16th September 1998, all the documents produced by the plaintiff are photocopies. The makers thereof were not called to produce them or testify on them. Although they were said by the Plaintiff to be intended to prove his ownership of the suit premises, I am afraid they do not meet the legal standards required in that regard. The documents, including the Land Rent demand and payment Receipts of June 2004 refer to the plot as an un-surveyed Residential Plot/Dagoretti/Riruta – Nairobi. It appears that it is the Applicant himself who has allocated the plot a number namely plot No. 36139/A/V/52 which from the correspondence exhibited in court represents some file reference number. This is not a Title Number.

Injunctive orders in the nature of which is sought by the Plaintiff cannot issue to a person who does not have a legal or equitable interest in the property in question.

In the absence of a title, the Plaintiff has not established grounds for the issuance of the injunction sought against the Defendants. Even if he has developed the land, which he did not even submit in evidence, such developments, in the absence of legal title may have been put in place at his own peril.

Instead of filing this suit the Plaintiff would perhaps have been better off pursuing the issue of his registration as owner of the suit premises in order to seal his claim thereto. As it is I see no legal basis for granting the orders sought since the Plaintiff has not proven a superior interest to that of the other occupants of the plot. For that reason my judgment of 13th March 2006 which I must admit was

erroneously entered, the court having found that the Defendants had in fact filed a Defence, is hereby set aside. The Plaintiff has failed to prove his case on the balance of probabilities. I find therefore that his suit fails and the same is hereby dismissed.

The Defendants having shown no interest in the suit I make no orders as to costs.

Dated and delivered at Nairobi this 8th day of June 2006

M. G. MUGO

JUDGE

Delivered in the Presence of

David G. Mukujura the Plaintiff in person

No appearance for Defendant