

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
Civil Suit 1266 of 2002

GEDION NYAMU NGUO..... PLAINTIFF
VERSUS
KIRINYAGA COUNTY COUNCIL..... 1ST DEFENDANT
GATHAKA THOITHI T/A GATHAKA THOITHI & CO.....2ND DEFENDANT

JUDGMENT

The Plaintiff Gedeon Nyamu Nguo is the registered proprietor as Lessee of the parcel of land known as Mwerua/Kagio/212/55 under a Certificate of Lease dated 17th September 2001 produced in evidence in this suit as Plaintiff's "exhibit P.2". He wishes to develop this plot and has taken steps towards that end by causing Architectural drawings to be prepared and presented to the Kirinyaga County Council for approval. The said drawings were produced in Court as Exhibit P.3".

The facts of this suit are fairly simple. As stated in his plaint filed herein on 29th July 2002 the Plaintiff alleges that in January 2002 he submitted his Architectural drawings to the 1st Defendant as stated earlier in this judgment but the 1st Defendant refused to approve the same on the ground that the plot in question had been sub divided and a portion thereof allotted to the 2nd Defendant. The Plaintiff states further in his plaint that the 2nd Defendant has gone ahead and fenced off and started developing the part of the suit premises allegedly allotted to him by the 1st Defendant. It would seem from the particulars given in paragraph 10 of the Plaint that a letter of allotment and approval for development of the plot by the 2nd Defendant have been issued to the 2nd Defendant by the 1st Defendant.

The hearing of this suit proceeded undefended, the two defendants having failed to enter appearance on 18th September 2003 alongside the plaint as confirmed by the Plaintiff's Counsels affidavit of service filed herein on 27th October 2003. This being the case this Court has no alternative but to find that the basis of his un rebutted evidence proven his case on the balance of probabilities. He holds a valid title as a proprietor of a lease in terms of Section 27 (b) of the Registered Lands Act (Chapter 300 of the Laws of Kenya) by virtue of which his rights of proprietorship are indefeasible under Section 28 of the said Act.

I have no hesitation therefore in holding that the Plaintiff's suit against the two defendants herein succeeds. Accordingly, I enter judgment in favour of the Plaintiff against the Defendants as prayed in the Plaint dated 21st July 2002.

Dated at Nairobi this 14th day of October 2005.

M.G. Mugo

Judge

In the presence of:

Mr. Nyamweya h/b for Nyaberi for Plaintiff

N/A for Defendants