



IN THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.645 OF 1997

MWANGI NGUROPLAINTIFF

V E R S U S

COMMISSIONER OF LANDSDEFENDANT

J U D G M E N T

By plaint filed on 17-3-97 the plaintiff prayed a declaration that the registration into his name of parcel of land known as DAGORETTI/KANGEMI/T 436 for a term of 99 years with effect from 1-10-94 a leasehold secondly a permanent order restraining defendant from canceling the registration of the plaintiff as the proprietor of the suit plot. The defendant did not enter defence in time and therefore the plaintiff applied for and was granted leave to enter default judgment on 5-5-2000 but on 9-6-2000 the Attorney General entered defence but when the case came for hearing on 3-03- 03, the defendant did not attend.

In his evidence PW1 MWANGI MBURU says that he holds certificate of lease as proprietor of LR.NO.DAGORETTI/KANGEMI/T436 for a term of 99 years with effect from 1-10-1994. That he paid KShs.33,640/= on 6-10-96 to the Commissioner of Lands as the amount given to him in the letter of allotment which he had been given on 10-5-94 Ex.2. That on 10-2-95 he was granted certificate of lease.

He paid KShs.3,900/= for rates but then on 23-10-96 he got notice from Nairobi City Council saying that the allocation was to be cancelled and threatening demolition but while he was still reasoning over it the allotment was cancelled. The letter Ex.9 read as follows:-

Mwangi Nguro
30-1-97

P. O. Box 15536

NAIROBI

RE: PLOT NO.436 – DAGORETTI/KANGEMI

Reference is made to the allocation of the above plot to you and issuance of the Title Deed.

It has come to the Notice of the Government that the plot in question is functionally a frontage/car parking servicing the existing shops. It cannot therefore be developed for the purpose it was developed for.

It is therefore Government intention to cancel the allocation so as to prevent

development which will be injurious and prejudicial to the existing physical developments.

You are thus required to return the title for surrender purposes to avoid any inconvenience either to yourself or the existing facilities.

P. AMIANI

For Commissioner of Lands

The plaintiff says the property had passed to the plaintiff and that the Government and the Local Authority were estopped from accepting liability.

I believe that the matter is not defended but the law governing this is the Government Lands Act Cap.280 and Land acquisition Act Cap.

There are implied covenants on all leases from Government leases and where such happens and Government makes an entry compensation may be paid i.e. (S.87 of Cap 280) for buildings on the land. The provisions under Government Lands Act Cap.280 do provide for acquisition but gives reasons and compensation so is land acquisition Act Cap 295 S.6 thereof where the Commissioner would be required to Gazette the intention to acquire land for as specified. What the Commissioner did here appears not to follow those provisions of the two Acts and more the Notice does not quote the provision of Law under which they are acting.

The evidence shows that plaintiff did all that was needed and the transaction was registered under Government Lands Act being a lease from the Government and therefore the Title issued thereto under S.23 of registration of Titles Act Cap 281 is conclusive evidence of ownership. I have no hesitation in declaring the plaintiff to be the owner of this land.

As for permanent injunction I do think the court can be injuncted in the way prayed because it would amount to barring the government from performing certain statutory acts provided under Registration Act.280, 281 etc.

There will be judgment for the plaintiff in the first prayer but not on the second prayer with costs to plaintiff. Order accordingly.

Read in Nairobi this 9th day of May 2003

A. I. HAYANGA

J U D G E

Read to Mr. Lugadilu for plaintiff