



**Mwangi v Wainana (Environment & Land Case 13 of 2022)
[2022] KEELC 14620 (KLR) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14620 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 13 OF 2022
EK WABWOTO, J
NOVEMBER 3, 2022**

BETWEEN

FRANCIS MAINA MWANGI APPELLANT

AND

DAVID WARUHIU WAINANA RESPONDENT

RULING

1. The Appellant filed a Notice of Motion Application dated 2nd May 2012 which was accompanied by a Supporting Affidavit sworn by Francis Maina Mwangi seeking for the following orders:
 - i. That the Vesting Order given by the High Court on the 17th June 1983 and issued on the 17th June 1986 in H.C Misc. Civil Suit No 295 OF 1979(O.S.) vesting L.R. No 209/4401/358 to the Applicant be registered unconditionally and any encumbrances, charges, restrictions or other instruments registered against the title comprise in Grant No. I.R -12431/1 or LR No 209/4401/358 be removed, cancelled and/or discharged forthwith.
 - ii. That the costs of the Motion be provided for by the Respondents herein.
2. The Application was based on several grounds including the following:
 - a. On 31st March 1997- the Appellant purchased the suit property-LR No 209/4401/358 situated at Makadara Estate Nairobi at a public auction conducted in execution of a judgement and decree given in RMCC 4496 of 1976.



- b. Upon purchasing the property, the Appellant was issued with a certificate of sale and thereafter obtained a Vesting Order from the High Court through H.C. Misc Civil Suit No. 295 of 1979(O.S.) on 17th June 1983.
 - c. That unfortunately the Vesting Order could not be registered against the title for the reason that there was pending before this court HCCA No 93 of 1988 in which the Appellant has appealed against the orders given by G.N Osango (Hon R.M.) setting aside the judgement and decree pursuant to which the Appellant had purchased the suit property. The said appeal took many years to be determined and allowed on 18th May 2007.
 - d. That upon setting aside the Magistrates Orders- the Appellant became entitled to benefit and to be restituted to the position in which he had been put before the offending orders of the lower court and by which he was entitled to become registered proprietor of the suit property.
 - e. That at the Miscellaneous Civil suit in which the Vesting order was issued was spent upon issuance of the same and there being no appeal against the judgement given on 18th May 2007-The Appellant now moves this Court to grant him the orders sought.
3. The Respondent was served as evidenced in Affidavits of Service dated 18th July 2022, 31st August 2022 and 21st October 2022 and sworn by Benjamin.M. Munguti. No response was filed and the application proceeded unopposed.
 4. Having considered the application and supporting documents, it is clear that the issues for determination before this court is whether the application dated 2nd May 2012 is merited.
 5. I have perused the file and confirmed the file was reconstructed pursuant to the orders issued by this court differently constituted and I therefore believe that the delay in making this application is justifiable and the same should not be used as against the Appellant. Taking note that the Appellant took possession of the suit property in 1979 and having demonstrated evidence of payment of the requisite rates, this Court has no qualms in upholding the Appellants constitutional right.
 6. In the foregoing, the Court finds that the Application dated 2nd May 2012 is merited and the same is allowed with no order as to costs.
 7. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF NOVEMBER 2022.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Kingara for the Appellant.

N/A for the Respondent.

Court Assistant; Caroline Nafuna.

E. K. WABWOTO



JUDGE

