

THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 641 OF 2017

JAMES KAHORO MAGU.....PLAINTIFF

VERSUS

RAPHAEL KINYANJUI GICHINGA (Sued as the Administrator

of the Estate of GICHINGA NJOROGE GITHIRI.....DEFENDANT

1. The plaintiff initiated this suit through an originating summons dated 30/6/2017 and taken out on 6/7/2017. He sought to be registered as proprietor of Land Title Number **Tinganga/Cianda Block 1/676 (the suit Property)** pursuant to the doctrine of adverse possession under **Sections 37 and 38** of the Limitation of Actions Act. The defendant did not enter appearance in the suit. Consequently, Gacheru J heard the suit *ex-parte* and rendered a judgment on 9/4/2018. She awarded the plaintiff the suit property in the following terms:

- a) *The plaintiff has acquired titled to the suit property Tinganga/Cianda Block 1/676 by virtue of adverse possession.*
- b) *The defendant's right and title to the said property Tinganga/Cianda Block 1/676 has been extinguished upon expiry of 12 years since the plaintiff took possession in 1998.*
- c) *The Defendant is therefore holding the suit property in trust for the plaintiff (constructive trust) and the plaintiff is entitled to be registered as proprietor of the suit property Tinganga/Cianda Block 1/676.*
- d) *The defendant is directed to sign all the necessary documents to facilitate transfer of the suit property to the plaintiff within a period of 30 days from the date hereof. Failure to do so, the Deputy Registrar of this Court is authorized to sign and execute all the necessary transfer documents of the suit property Tinganga/Cianda Block 1/676 to effectuate the registration of the plaintiff as the proprietor thereof.*
- e) *Further, the plaintiff is entitled to costs of this suit.*

2. Subsequently, in 2021, the plaintiff brought a notice of motion dated 1/3/2021, seeking an order cancelling all entries contained in the green card opened 2/11/2015 relating to the suit property. The application was supported by the plaintiff's affidavit sworn on 1/3/2021. The plaintiff deposed that upon obtaining judgment in this suit, he extracted the decree and enforced it by causing the suit property to be registered in his name. However, when he recently applied for an official search relating to the suit property, he was shocked to discover that a parallel green card/parcel register had been opened bearing **2/11/2015** as the date when it was opened. He added that it was apparent the act of opening a parallel parcel register on 2/11/2015 was fraudulent and irregular because the previous owner of the land, **Gichinga Njoroje Githiri**, was issued with a title deed on 3/5/1995 upon opening a parcel register on the same day, and therefore no legitimate subsequent parcel register could be opened on 2/11/2015.

3. The application was unopposed. It was canvassed orally in the virtual court on 13/10/2021. The court has considered the application together with the oral submissions made by counsel. The court has also considered the relevant legal framework and jurisprudence.

4. What emerges from the record before court and from the submissions by counsel is that this suit was fully heard and judgment was rendered. Further, the decree of the court was fully executed and the plaintiff was registered as proprietor of the suit property. The plaintiff has, however, discovered that there exists a fraudulent parallel parcel register relating to the same parcel of land. Without saying much, the act of opening or generating a parallel parcel register is a distinct cause of action. The cause of action in the originating summons herein was founded on the doctrine of adverse possession. That cause of action was ventilated and adjudicated fully. This suit is, at this stage, therefore not available as a platform on which to ventilate or adjudicate the cause of action relating to the act of opening a fraudulent parallel parcel register relating to the suit property. Should the plaintiff find it necessary, the proper civil platform on which to ventilate the cause of action relating to the opening of a parallel parcel register is a separate suit against the Land Registrar and the person in whose name the parallel parcel register was opened.

5. For the above reasons, I decline to grant the order sought in the notice of motion dated 1/3/2021 on the platform of this suit because this suit is spent. There shall be no order as to costs.

6. Lastly, and purely as an *obiter dictum*, there is no gainsaying that no parcel of land is supposed to have two or more parcel registers. The allegations of a parallel parcel register therefore have serious criminal bearing. Besides ventilating his grievances in a civil court, the plaintiff is, in the circumstances, directed to ensure that the Directorate of Criminal Investigations is seized of the allegations herein for their appropriate action in accordance with their mandate.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 1ST DAY OF NOVEMBER 2021

B M EBOSO

JUDGE

Court Assistant: Lucy Muthoni