



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C. CASE NO. 145 OF 2014

(FORMERLY KERUGOYA ELC 54 OF 2012)

RAPHAEL NJERU NJIRU.....PLAINTIFF

VERSUS

GERALD NJERU NJIRU.....DEFENDANT

JUDGEMENT

1. By a plaint dated 29th November 2012 and filed on 6th December 2012, the Plaintiff sought the following reliefs against the Defendant;
 - a. *The deletion of the names of Gerald Njeru Njiru on the parcel of land number Embu/Gangara/46 and their replacement with Raphael Njeru Njiru.*
 - b. *The title deed issued to Gerald Njeru Njiru to be declared void and of no consequence.*
 - c. *Costs and interest of this suit.*
 - d. *New title be issued in the name of Raphael Njeru Njiru.*
2. The Plaintiff pleaded that he was allocated *Title No. Embu/Gangara/46* (hereinafter called the *suit property*) sometime in 1973 or thereabouts. At the material time, he was a minor then known as Njeru Njiru.
3. It was further pleaded that when he attained the age of majority he sought to be issued with a title deed for the suit property only to discover that the Defendant had already obtained a title deed for the suit property.
4. The Plaintiff contended that the Defendant had fraudulently obtained title to the suit property by misleading the Land Control Board (LCB) that he was the Njeru Njiru who was allocated the suit property.
5. The record shows that the Defendant could not be traced for personal service of court process hence the Plaintiff applied for substituted service on 30th July 2013. The relevant advertisement was carried in the Daily Nation of 21st May 2014.
6. The Defendant did not enter an appearance to the suit despite such service hence the suit proceeded in his absence all through.

7. At the trial hereof, the Plaintiff testified that he was the rightful owner of the suit property since it was allocated to him by his Gekara clan in 1973. He stated that the Defendant was not yet born at the material time since he was born in 1975. The Plaintiff also called 4 other witnesses who supported his case. Two of them were his close relatives whereas the other two were his neighbours.

8. The court has considered the oral and documentary evidence of the Plaintiff in this matter. The court has seen copies of the application form for correction of name issued to the Defendant (exhibit P.6) as well as statutory declaration sworn by the Defendant on 30th April 2007. The court is satisfied that on the basis of the evidence on record the Plaintiff has proved his case to the required standard. His evidence was not challenged by the Defendant since he did not appear to defend the suit.

9. The upshot of the foregoing is that the court finds merit in the Plaintiff's suit. Consequently, judgement is hereby entered for the Plaintiff against the Defendant as prayed in the plaint. The court consequently makes the following orders;

- a. The name of the Defendant GERALD NJERU NJIRU, be cancelled from the land register as proprietor of *Title No. Embu/Gangara/46* by the Land Registrar Siakago.
- b. The title deed issued to the Defendant, Gerald Njeru Njiru, is hereby declared null and void.
- c. The Land Registrar, Siakago shall register the Plaintiff as the proprietor of *Title No. Embu/Gangara/46* and issue him with a title deed.
- d. The Plaintiff is awarded costs of the suit.

10. It is so decided.

JUDGEMENT DATED, SIGNED and DELIVERED in open court at **EMBU** this **4th** day of **OCTOBER, 2018**.

In the presence the Plaintiff and in the absence of the Defendant.

Court clerk Muinde.

Y.M. ANGIMA

JUDGE

04.10.18