



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO. 41 OF 2019

GEORGE GIKUBU MBUTHIAPLAINTIFF

VERSUS

MOHAMMUD SHEIKH HUSSEIN.....1ST DEFENDANT

CHIEF LAND REGISTRAR2ND DEFENDANT

GARAM INVESTMENT AUCTIONEERS3RD DEFENDANT

GULF AFRICAN BANK LIMITED.....4TH DEFENDANT

SAC (K) LIMITED5TH DEFENDANT

RULING

1. Coming up for determination is the issue of costs following the withdrawal of the suit by the Plaintiff Mr. George Gikubu on 24th November 2021. This suit was filed on 12th February 2019 by way of plaint and further amended plaint dated 6th November 2019 seeking:

a. A declaration that the Plaintiff is the lawful proprietor of the property known as Land Reference Number 36/11/1 situate in Eastleigh Nairobi as per decree issued on 23rd October 1991; b) Cumulative rent of Kshs. 232,880,000 to be paid to the landlord/ owner from 20th December 2005 to date as shall be directed by the court; c) A permanent injunction be issued restraining the Defendants either by themselves or their agents, police and/ or employees or otherwise howsoever from transferring, offering for sale, leasing, subletting, charging or otherwise interfering with the property known as Land Reference Number 36/11/1; d) A mandatory injunction be issued compelling the first and second Defendants to yield to the plaintiff vacant possession of the property known as Land Reference Number 36/11/1 Eastleigh Nairobi; e) A mandatory injunction be issued compelling the *third* defendant to cancel the registration known as Land Reference Number 36/11/1 in favour of the first Defendants; f) Costs of the suit.

2. The 1st Defendant in his replying affidavit dated 13th February 2019 averred that he was the registered proprietor of the suit property having purchased it through a Conveyance Mortgage dated 24th April 2006 from Housing Finance Company of Kenya Limited (HFCK) for Kshs. 20,000,000. He indicated that a search conducted at the Lands office in 2018 showed that he was the owner of the property. He also stated that the suit was an abuse of court process highlighting the following 4 cases involving him, the plaintiff and HFCK over the same property.

i. Nairobi Civil Appeal No. 90 of 2008, George Gikubu Mbuthia v HFCK, Attorney General and Muhamud Sheikh Hussein (2009) eKLR-The appeal was dismissed;

ii. Milimani HCCC 162 of 2006, HFCK v George Gikubu Mbuthia (2006) eKLR- The suit was marked as settled by consent on 27th September 2007;

iii. Nairobi Civil Appeal 173 of 2010 (being an appeal from ELC 358 of 2009) George Gikubu Mbuthia & 2 others v HFCK & 2 others (2018) eKLR- Court of Appeal declined to stay the order for security of cost which the ELC had ordered him to pay Kshs. 5,000,000 as security for costs.;

iv. Nairobi Civil Appeal 173 of 2011, George Gikubu Mbuthia & 2 others v HFCK & 2 others (2018) eKLR- The Plaintiff's

appeal was dismissed.

3. The 3rd Defendant in the replying affidavit dated 29th January 2020 outlined how the suit property's title passed from Lalchand Son Jowahar Ram to Ali Ainashe in 1974 to George Gikubu Mbuthia in 1983 to Housing Finance Company of Kenya Ltd, and the suit land was then transferred to Muhamud Sheikh Hussein in 2006.

4. In an application dated 12th March 2021, which was dismissed for want of prosecution on 21st July 2021 the Plaintiff intended to withdraw the suit on grounds *inter alia* that the dispute over property No. LR 36/11/1 was settled.

5. In a ruling dated 24th November 2021, this court asked the Plaintiff to state categorically whether he wished to withdraw the suit in which the Plaintiff responded to the affirmative. The suit was hence marked as withdrawn but the issue of costs is the subject of this ruling.

6. Section 27 of the Civil Procedure Act provides that *costs shall follow the event unless the court or judge for some good reason otherwise orders.*

7. The Supreme Court of Kenya in the case of **Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2014] eKLR**; pronounced itself on the issue of costs in the following words:

“ So the basic rule on attribution of costs is: costs follow the event. But it is well recognized that this principle is not to be used to penalize the losing party; rather, it is for compensating the successful party for the trouble taken in prosecuting or defending the suit”

8. I find that some of the Defendants have pointed out the litigation history of the dispute which depicts the Plaintiff as a rather litigious litigant. As such, this court does not see any good reason why it should deviate from the law and common practice on costs. The Plaintiff is the one who dragged the other parties into this matter. He ought to pay costs. Thus the Plaintiff is condemned to pay costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF DECEMBER, 2021 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

George Gikubu Mbuthia - Plaintiff present in person

Mwihaki for the Defendant

Court Assistant: Eddel Barasa