



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 151 OF 2015

PETER MUCHIRI GAKU.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF KIRINYAGA.....DEFENDANT

JUDGMENT

INTRODUCTION

The plaintiff filed this suit vide a plaint dated 27th November 2015 and amended on 1st August 2017, seeking the following orders:

- (a) Declaration that the plaintiff is the lawful owner of land parcel number KABARE/NYANGATI/3316, KABARE/NYANGATI/3317, KABARE/NYANGATI/3318 and KABARE/NYANGATI/3319.***
- (b) An order of permanent injunction restraining the defendant from interfering with the plaintiff's possession and occupation of land parcel No. KABARE/NYANGATI/3316, KABARE/NYANGATI/3317, KABARE/NYANGATI/3318 and KABARE/NYANGATI/3319.***
- (c) Costs of the suit and interest.***

The defendant filed Defence to the plaintiff's claim on 17th December 2015 denying the plaintiff's claim and sought to have the suit dismissed with costs.

PLAINTIFF'S CASE

In his statement dated 27th November 2015 and which he relied entirely in his testimony, the plaintiff stated that he is the registered proprietor of land parcel No. KABARE/NYANGATI/3316, KABARE/NYANGATI/3317, KABARE/NYANGATI/3318 and KABARE/NYANGATI/3319 having purchased the same from one Paul Muriithi Nyamu and got registered on 11/11/1998. He further stated that he has been in occupation of the parcels of land and that the defendant without any colour of right placed a restriction on the parcels of land. The plaintiff produced a sale agreement dated 6/11/1998, green cards for three parcels of land No. KABARE/NYANGATI/3316, KABARE/NYANGATI/3317, KABARE/NYANGATI/3318 and KABARE/NYANGATI/3319 respectively as contained in the plaintiff's list of documents dated 27/11/2015. He also produced copies of title deeds for the three parcels of land and certificates of official search.

DEFENDANT'S CASE

The defendant did not call any witness(es) or offer any evidence in defence of the plaintiff's claim.

ISSUES FOR DETERMINATION

The issues for determination in this suit are as follows:

- (1) Whether the plaintiff has proved his claim on the required standard?**
- (2) Who shall bear the costs?**

ANALYSIS AND DETERMINATION

The issue whether the plaintiff has proved his claim can be discerned from the evidence which is not controverted in any way. The plaintiff stated on oath that he is the registered proprietor of the three parcels of land being No. KABARE/NYANGATI/3316, KABARE/YANGATI/3317, KABARE/NYANGATI/3318 and KABARE/NYANGATI/3319 which he bought from one Paul Muriithi Gaku on 16th November 1998. He produced the sale agreement, green cards, title deeds and certificate of official search in respect of the three parcels of land. These documents are clearly prima facie evidence of ownership of land which have not been challenged by the defendant. The plaintiff stated that in the year 2014 or thereabouts, the defendant without any reasonable cause placed a restriction on his parcels of land indicating that they have an ownership interest. He then wrote a demand letter that the same be removed and on 12/2/2016, the said caution was removed by the defendant. The defendant filed a defence to the plaintiff's claim defending her actions. However, the defendant failed to call witness to defend their position. I am satisfied that the plaintiff has proved that he is the registered proprietor of the suit properties and the title deeds issued are protected by law. I therefore enter judgment for the plaintiff against the defendant in the following terms:

(1) Removal of the restrictions placed against land parcels number KABARE/NYANGATI/3316, KABARE/YANGATI/3317, KABARE/NYANGATI/3318 and KABARE/NYANGATI/3319.

(2) The costs of this suit to be borne by the defendant.

READ, DELIVERED and SIGNED in open Court at Kerugoya this 24th day of January, 2020.

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E.C. CHERONO

ELC JUDGE

24TH JANUARY, 2020

In the presence of:

- 1. Mr. Munene holding brief for Mrs Makworo for Plaintiff*
- 2. Defendant/Advocate – absent*