



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 369 OF 2018**

**JULIUS KERU NJOROGE.....PLAINTIFF**

**VERSUS**

**SILAS MWANGI.....1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

1. The Plaintiff filed this suit on 28/8/2018 seeking to be declared the registered proprietor of land reference number 37/272/5 (IR No. 83804) situated in Nairobi West (the "Suit Property") as a tenant in common with Grace Wamiti Keru. He sought an order to evict the Defendant from the Suit Property and the demolition of the developments on the Suit Property. He also sought a mandatory injunction to be restored onto the Suit Property and a permanent injunction to restrain the Defendants or their agents from dealing with the Suit Property. Further, he sought an order of cancellation of any title held by the 1<sup>st</sup> Defendant or any other person over the Suit Property and rectification of the lands register to restore him and Grace Wamiti Keru as tenants in common of the Suit Property. In addition, he sought general damages for unlawful eviction and demolition of his developments on the Suit Property and punitive and exemplary damages for the 1<sup>st</sup> Defendant's fraudulent dealings with the Suit Property.
2. Summons to enter appearance were served and an affidavit of service was filed in court on 21/1/2019. The Defendants did not enter appearance or file defences.
3. The Plaintiff gave evidence and produced a copy of the title over the Suit Property issued to him on 20/6/2000. He claimed that he exercised due diligence before purchasing the Suit Property with his wife. He claimed that he had developed the Suit Property and that he had duly paid the requisite land rates and all outgoings in respect of the Suit Property to the Nairobi City County. He produced a search of the Suit Property which confirmed that he was the registered owner of the Suit Property with his wife. He claimed that they enjoyed quiet possession of the Suit Property from the time they bought until 27/6/2018 when the 1<sup>st</sup> Defendant entered into the land purporting to be its owner. He claimed that the 1<sup>st</sup> Defendant had placed goons on the Suit Property who were looting and demolishing the developments on it.
4. The Plaintiff stated that he lodged a complaint with the Land Fraud Unit of the Directorate of Criminal Investigations to investigate the 1<sup>st</sup> Defendant's conduct. He claimed that his constitutional right to own and enjoy property was under siege following the issuance of a title to the 1<sup>st</sup> Defendant. He produced copies of documents showing payment of rates as well together with land rates payment receipts.
5. The issue for determination is whether the court should grant the orders sought in the plaint. The Plaintiff filed submissions and contended that he had proved that he owned the Suit Property with his wife based on the title he produced in court. He relied on Section 26 of the Land Registration Act which stipulates that a certificate of title is conclusive evidence of proprietorship subject to the exceptions set out in that section. He also relied on Section 24 of the Land Registration Act together with Article 40 of the Constitution.
6. The Plaintiff did not adduce any evidence to show that the 1<sup>st</sup> Defendant had acquired another title over the same Suit Property. He did not lead any evidence on the development he claimed he had put up on the suit land or of the demolition of his development. There was no evidence led on what the developments the 1<sup>st</sup> Defendant has carried out on the Suit Property.
7. Based on the evidence the Plaintiff produced of the title over the Suit Property, the court only grants prayer (a) of the plaint dated 27/8/2018.

Dated and delivered at Nairobi this 9<sup>th</sup> day of March 2020

**K.BOR**

**JUDGE**

**In the presence of:-**

Mr. V. Owuor- Court Assistant

No appearance for the parties