



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC NO. 474 OF 2015**

**TEKIE GHEBRIMICHAEL .....PLAINTIFF**

**=VERSUS=**

**NAIROBI CITY COUNTY.....1<sup>ST</sup> DEFENDANT**

**CHIEF OFFICER, LANDS,**

**NAIROBI CITY COUNTY.....2<sup>ND</sup> DEFENDANT**

**REGISTRAR OF TITLES .....3<sup>RD</sup> DEFENDANT**

**CHIEF LANDS REGISTRAR.....4<sup>TH</sup> DEFENDANT**

**NATIONAL LANDS COMMISSION.....5<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

1. By an amended plaint dated 16<sup>th</sup> January 2018, the Plaintiff sought the following reliefs from the defendants:-

*a. That this Honourable Court be pleased to issue a declaration that the properties in all that parcel of land known as LR No.25201/3 Ngara and LR No 25201/4 Ngara, Deed Plan No.237872 exclusively belongs to the plaintiff and that the plaintiff is the legal proprietor to the same.*

*b. That this Honourable court be pleased to issue a permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants by themselves, its agents and/or its servants or whomever from encroaching upon/erecting or causing it to be erected thereon any structure, trespassing into, from wasting , from constructing on, from alienating ,from selling, from disposing ,from charging , from transferring or otherwise interfering and/or from dealing with the plaintiff's properties being L R No.25201/3 Ngara and LR No.23201/4 Ngara, Deed Plan No.237872.*

*c. That this Honourable Court be pleased to issue a permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> , 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants from undertaking ,processing , issuing or in any other manner undertaking a process involving LR No.25201/4 into the names of Stephen Maina Gichuhi.*

*d. That this Court be pleased to issue an order compelling the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> ,4<sup>th</sup> and 5<sup>th</sup> defendants to process and issue titles to the parcel of land known as LR No.25201/3, Ngara and LR No.23201/4 Ngara, Deed Plan No.237872 into name of the plaintiff.*

*d(i) That in the alternative the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants be compelled and ordered by order of the court to compensate and/or pay to the plaintiff full market value of the properties LR No.25201/3 Ngara and LR No. 23201/4 Ngara in the sum of Kshs.250,000,000.00 as at the 21<sup>st</sup> day of July 2017 or such other current market value.*

*e) Costs of the suit at court rates plus interest*

*f) Such further or other relief as this Honourable Court may deem fit.*

2. The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a defence to the original plaint but they did not file an amended defence after the plaint was amended. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants who were brought into the suit after amendment filed a defence to the amended plaint. The 5<sup>th</sup> defendant neither entered appearance nor filed defence.

3. At the hearing of this suit the defendants who had been duly served did not attend court for hearing. The hearing therefore proceeded ex-parte. The plaintiff testified that in 2002, the Nairobi City Council which is the predecessor of the Nairobi City County allotted him **LR No. 25201/3** and **LR 25201/4** at Ngara in Nairobi City (suit properties). The plaintiff paid all the amounts required of him under the letter of allotment.

4. The plaintiff thereafter started paying rates to the City County of Nairobi. At some stage, one Stephen Maina Gichuhi went to City Hall and had the records in respect of the suit properties changed and he started paying rates in respect of the same. The plaintiff raised this issue with Nairobi City Council and later with Nairobi City County and even reported the matter to the police for investigations.

5. As the plaintiff was pursuing title, in respect of the suit properties over which he had obtained deed plans, the Nairobi City County summoned him to their offices under the guise of sorting out his problems but they ended up confiscating all the original documents from him.

6. The plaintiff later learnt that even the Nairobi City Council was pursuing the same properties which it wanted allocated to it. After the Nairobi City County Officials refused to return the original documents which were confiscated from him, he filed this suit in which he now seeks orders compelling the defendants to process title in respect of the suit properties in his names or compensate him **Kshs.250,000,000/=** which is the market value of the suit properties.

7. The Plaintiff called PW2 Nelly Karimi Mbugua a valuer who testified that she went to the ground where she valued the suit properties whose market value is **Kshs.250,000,000/=** she testified that the suit properties exist on the ground only that some unknown persons have put up temporary structures on the same. This witness produced a valuation report which she prepared.

8. I have considered the evidence adduced by the plaintiff. I have also considered the plaintiff's submissions. The plaintiff testified that the original documents were confiscated from him by the officials of Nairobi City County. He however produced copies of the documents which he had retained. There is an allotment letter dated 1/3/2002 in respect of **LR No.25201/3**. The plaintiff also produced another allotment letter for a commercial plot dated 15/6/1999. The plaintiff also produced copies of receipts for payment of rates and other receipts in the name of Stephen Maina Gichuhi who had attempted to take over the suit properties by changing records at the City Council of Nairobi. This Stephen Maina Gichuhi later swore an affidavit in which he stated that he had no interest in the two properties and that his name should be deleted from the records held at Nairobi City County.

9. The witness who was called by the plaintiff produced a valuation report which showed that the two properties were valued at **Kshs. 250,000,000/=** as at 2017 when valuation was carried out. This evidence by the plaintiff is not controverted. The 1<sup>st</sup> and 2<sup>nd</sup> defendants claimed in their defence that the suit properties were a subdivision of **LR NO.209/2760** which houses Ngara City County houses and that the suit properties were hived from the open spaces which are used by the children of the residents as a play ground. What is baffling is that in 2009, the Nairobi City Council had applied to the Ministry of Lands to be allocated the suit properties. If it is true that the land belonged to the City Council of Nairobi, why was the same council applying to be allocated the same land.

10. The averments in the defence are just pleadings. Without evidence, the averments remain bare. I therefore find that the plaintiff has proved that he is the one entitled to the suit properties. The way things are, the plaintiff might not get title to the suit properties. The Nairobi City County has interest in the same properties. I will therefore find that the most appropriate remedy is compensation. I therefore enter judgement for the plaintiff against the 1<sup>st</sup> and 2<sup>nd</sup> defendants jointly and severally in the sum of **Kshs.250,000,000/=** being compensation for the two suit properties. The Plaintiff shall also have costs and interest to be payable by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

**Dated, Signed and delivered at Nairobi on this 3<sup>rd</sup> day of October, 2019.**

**E.O.OBAGA**

**JUDGE**

In the absence of the plaintiff and his advocates who were aware of the date

and time of delivery of Judgment.

Court Clerk : Hilda

**E.O.OBAGA**

**JUDGE**