



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 1020 OF 2014**

**DAVID WANYOIKE GATHUA.....PLAINTIFF**

**VERSUS**

**HOSEA IMBO OWINO.....DEFENDANT**

**JUDGMENT**

1. Through a plaint dated 31/7/2014, the plaintiff instituted this suit seeking the following verbatim orders against the defendant:

***a) An order of permanent injunction directing the defendant either by itself, its agents or servants from trespassing, constructing or otherwise dealing with the plaintiff's Plot No 37 Kahawa West Phase II.***

***b) An order for eviction of the defendant from Plot No 37 Kahawa West Phase II.***

***c) Costs and interests of this suit.***

***d) Any other or further relief which this honourable court deems fit and just to grant.***

2. The plaintiff contended that he was the lawful owner of a piece of land described as **Plot No 37 Kahawa West Phase II (the suit property)**, having purchased the said plot jointly with his brother, Richard Njoroge Waweru, from one Joyce Nduta Mwangi in 2006. It was his contention that the defendant had trespassed on the suit property and was carrying out illegal developments on it. Consequently, he sought the above reliefs.

3. The defendant contested the plaintiff's claim through a statement of defence dated 12/9/2014 and filed on 12/9/2014. The defendant's case was that the suit property belonged to him; he had not disposed it to any person; and he was entitled to do whatever he wished to do with the suit property.

4. Hearing of this suit proceeded *ex-parte* on 6/11/2010 after the defendant failed to attend the hearing despite having been served with a shearing notice through a notice published in the standard newspaper edition of 29/8/2019.

5. At the hearing, the plaintiff adopted his witness statement dated 21/12/2017 as part of his sworn evidence-in-chief. His evidence was that, on 20/3/2006, jointly with his brother, Richard Njoroge Waweru, they purchased the suit property from one Joyce Nduta Mwangi at Kshs 400,000. They took possession and fenced the suit property. They were however not issued with a new allotment letter. Instead, an endorsement was made on the allotment letter issued to the vendor. The plaintiff added that the Town Clerk of the City Council of Nairobi internally transferred the suit property to them vide a letter referenced CPD/8759. The plaintiff further testified that he subsequently bought off his brother and he became the sole owner of the suit property.

6. He produced the following seven exhibits: (i) Allotment Letter (ii) Photographs (iii) Ground Rent Invoices; (iv) Sale Agreement; (v) Land Rates Receipts; (vi) City Council Receipts; (vii) Court Proceedings in Makadara Criminal Case no 2037/2013 (viii) Police OB Number 17/28/6/12; (ix) Bond and ; (x) Letter dated 23/10/2012 from City Council.

7. The plaintiff filed brief written submissions on 20/1/2020 through his advocates, M/s Mulandi Kiesabit & Associates Advocates. Counsel for the plaintiff identified the following as the two key issues falling for determination: (i) whether the plaintiff is entitled to the prayers sought in the plaint; and (ii) who should bear costs of the suit. Counsel argued that the plaintiff had testified and produced documents to demonstrate that he was the legitimate owner of the suit property. He added that if the defendant was serious about defending the suit, he should have attended the hearing and led evidence. It was further contended that the logical reason why the defendant did not bother to lead evidence was that the documents he relied on never existed. Lastly, counsel urged the court to grant the prayers sought in the plaint and

award the plaintiff costs of the suit.

8. I have considered the pleadings together with the evidence and submissions. Although the defendant filed a defence, he did not lead any evidence and he did not cross-examine the plaintiff. The plaintiff's evidence is therefore uncontroverted.

9. The suit property is unsurveyed and untitled. The plaintiff claims to be the lawful owner of the suit property, having purchased it from one Joyce Nduta Mwangi. The defendant did not attend the hearing, and did not lead evidence to support his assertion that he was the lawful owner of the suit property. In the absence of controverting evidence, the court is satisfied that, on a balance of probabilities, the plaintiff has proved his claim against the defendant. Consequently, I allow the plaintiff's suit in the following terms:

*a) An order of permanent injunction is hereby issued directing the defendant, together with his agents/servants to cease trespassing on, constructing on, or dealing with Plot No 38 Kahawa West, Phase II, Nairobi.*

*b) An order is hereby issued for eviction of the defendant from the said Plot.*

*c) The plaintiff is awarded costs of the suit.*

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 9TH DAY OF JUNE 2020.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Mr Ambrose Mulandi for the Plaintiff

June Nafula - Court Clerk