



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

ELC CASE NO. 1479 OF 2014

ABDULLAH DIME SOLE.....PLAINTIFF

VERSUS

KAMANDE NJOROGE.....1ST DEFENDANT

KAMANGA NJOROGE.....2ND DEFENDANT

WANJIRU KAMANDE.....3RD DEFENDANT

WANJIKU KAMANDE.....4TH DEFENDANT

MUTHONI KUNGU.....5TH DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the Defendants seeking the following reliefs:-

a. A declaration that Plot Number K71-Mathare Valley Estate situated in Nairobi along Mathare Valley belongs to the Plaintiff and order the Officer Commanding Huruma Police Station (OCS) to ensure the Plaintiff is able to develop the said parcel without any interference.

b. A permanent injunction restraining the 1st, 2nd, 3rd, 4th and 5th Defendants and their agents or those claiming under them from interfering with construction of with Plot Number K71-Mathare Valley Estate situated in Nairobi.

c. Costs of the suit.

d. Any other relief which the Court may deem fit to grant.

2. The Plaintiffs who were duly served with summons to enter appearance neither entered appearance nor filed a defence. The hearing therefore proceeded by way of formal proof.

3. Plot No. K71-Mathare Valley Estate (suit property) originally belonged to Muiruri Njoroge. The said Muiruri Njoroge transferred the suit property to his two daughters who are named as the 3rd and 4th Defendants. The two daughters of Muiruri Njoroge then sold the suit property to the Plaintiff who was granted possession.

4. When the Plaintiff started constructing on the suit property, the Defendants who had their family property next to the suit property started interfering with the construction. The Plaintiff was forced to come to Court whereby he obtained an injunction restraining the Defendants from interfering with his construction. The Plaintiff later obtained an order from the Court directing the Officer Commanding Huruma Police Station to oversee the Implementation of the Orders which had been given in favour of the Plaintiff.

5. During the hearing of this suit, the Plaintiff testified that after he obtained an injunction from Court, the Defendants ceased from interfering with the suit property. He continued with construction on the suit property which he completed and the property is now occupied by his tenants.

6. I have looked at the documents produced by the Plaintiff. There is evidence that the Plaintiff purchased the suit property from the 3rd and

4th Defendants. The sale agreement was executed on 9th November, 2013. The 3rd and 4th Defendants have sworn affidavits confirming that they sold the suit property to the Plaintiff. When the Plaintiff's application for injunction came up for hearing on 5th May 2015, the two Defendants who were present confirmed that they had sold the suit property to the Plaintiff.

7. The 3rd and 4th Defendants applied to the Nairobi City Council to have the suit property transferred to the Plaintiff. The application for transfer was duly approved and the suit property was transferred to the Plaintiff who has been registered in the County records as owner of the suit property. The Plaintiff paid the required amount to the City County of Nairobi and is the one who has been paying rates.

8. The evidence of the Plaintiff has not been controverted. The Plaintiff had all the original documents in Court during the hearing as had been directed by the Court. I find that the Plaintiff has proved his case on a balance of probabilities. I enter Judgment in his favour against the Defendants jointly and severally as follows:-

a. A declaration is hereby given that Plot No. K 71 – Mathare Valley Estate situate at Nairobi along Mathare Valley belongs to the Plaintiffs.

b. A permanent injunction is given restraining the 1st, 2nd, 3rd, 4th and 5th Defendants and their agents or those claiming under them from interfering with Plot No. K 71 –Mathare Valley Estate in Nairobi.

c. Costs of the suit to be paid by the Defendants jointly and severally.

Dated, Signed and delivered at **Nairobi** on this 25th day of **June, 2019**.

E.O.OBAGA

JUDGE

In the absence of parties who had notice of date and delivery of Judgment.

Court Clerk Hilda