



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL CASE NO. 835 OF 2016

DOMINIC KAMAU KARIUKI.....PLAINTIFF

=VERSUS=

NAIROBI CITY COUNCIL.....DEFENDANT

JUDGEMENT

1. The plaintiff has filed this suit against the defendant seeking:-

(a) A declaration that the plaintiff is the lawful allottee of that plot known as No. 1/418/E situated off ring road, Kilimani, Nairobi.

(b) A perpetual injunction restraining the defendant by itself, its servants or agents from interfering with the plaintiff's right of ownership over that plot of land known as Plot NO 1/418/E off ring road Kilimani, Nairobi.

(c) Costs of the suit.

2. Upon being served with summons to enter appearance and copies of plaint, the defendant entered appearance on 2nd August 2016. It also filed a statement of defence dated 2nd August 2016 and filed in court on 4th August 2016.

3. It is the plaintiff's case that he was allocated plot No 1/418/E situated off ring road, Kilimani. He produced the letter of allotment as exhibit P2. He paid the required premium of Kshs.15,180 and ground rent of Kshs.3,000 and was issued with receipts. The receipts was produced as exhibit P2, P3 respectively. He later sought to construct a dwelling house thereon. He prepared building plans which were approved on 31st October 1997. The Nairobi City Commission (then) issued a letter to that effect. He produced it as exhibit P5. The letter forwarding the building plans for approval was produced as exhibit P4. The approved plans were produced as exhibit P6. Just before he commenced construction, the officers from the defendant stopped him claiming certain issues needed to be sorted out first.

4. The plaintiff decided to wait for communication from the defendant. He was however surprised when in 2013 the defendant put up a permanent wall around the suit plot hence denying him access to the suit plot. He instructed his advocates to write a demand letter to the defendant. The said demand letter was produced as exhibit P7. He prays that he be declared as the lawful allottee of the suit plot.

5. In the statement of defence, the defendant denied the plaintiff's claim in its entirety. It also denied allegations that it stopped the plaintiff from developing the suit property. Further that it is the lawful owner of the suit property and an order of injunction cannot issue against it. It prays that the case be dismissed with costs.

6. The defendant did not call any witnesses but tendered written submissions. It submitted that the plaintiff has no legal beneficial or proprietary interest on the suit property capable of being protected. The plaintiff has not been paying rates for the suit plot. Further that section 12 of the Physical Planning Act Cap 286 Laws of Kenya clearly stipulates that any development without the defendant's approval is illegal. The plaintiff cannot therefore be found to have a cause of action when he is in clear breach of the law as there was no approval issued by the defendant to the plaintiff to develop the suit property.

7. The requirements for grant of injunction have not been met as the plaintiff has not proved proprietary rights over the suit plot. The balance of convenience tilts in favour of the defendant who has established that the plaintiff is in illegal occupation of the suit property hence has no right to the prayers sought.

8. It is the plaintiff's submissions that he is the lawful allottee of the suit plot, there being no other evidence to controvert his.

9. I have considered the pleadings, the evidence of the plaintiff and the rival submissions of counsel. The issues for determination are:-

(i) Whether the plaintiff is the lawful allottee and beneficial owner of Plot No. 1/418/E off road Kilimani.

(ii) Whether or not he is entitled to the reliefs sought.

10. As stated earlier, the plaintiff's case is uncontroverted. He produced the letter of allotment dated 7th September 1992 from the Nairobi City Commission where he was allocated Plot NO 1/418/E situated off ring road, Kilimani, Nairobi. He also produced a receipt for KShs.18,150/- being payment made in respect of premium and ground rent in respect of the suit plot. He also produced the letter forwarding the building plans and the approvals issued by the Director of City Planning and Architecture. He also produced the Area Physical Development Plan bearing the suit property and indicating that the area was planned for development of residential houses. I have considered all these exhibits, I find that the plaintiff has proved that he is the lawful allottee and beneficial owner of Plot No1/418/E Kilimani, Nairobi.

11. The plaintiff also stated that the defendant has put up a perimeter fence on the suit plot thereby denying him access. I find that he is entitled to protection from this court. In essence I find that he is entitled to the reliefs sought.

12. All in all I find that the plaintiff has established his case on a balance of probabilities as against the defendant. I enter judgment in his favour as follows:-

(a) That a declaration be and is hereby issued that the plaintiff is the lawful allottee of all that plot known as Plot No. 1/418/E situated off ring road Kilimani, Nairobi.

(b) That a perpetual injunction be and is hereby issued restraining the defendant by itself, its servants, or agents from interfering with the plaintiff's right of ownership over all that plot known as Plot No. 1/418/E situated off ring road Kilimani Nairobi.

(c) That the plaintiff shall have costs of the suit and interest.

It is so ordered.

Dated, signed and delivered in Nairobi on this 20th day of JUNE 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Karoki for the Plaintiff

No appearance for the Defendant

Kajuju - Court Assistant