

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 981 OF 2012

TIMOTHY MWANGI.....PLAINTIFF

VERSUS

CITY COUNTY OF NAIROBI.....1ST DEFENDANT

KENNEDY WAINAINA NGENGA.....2ND DEFENDANT

JUDGEMENT

1. Following the discovery by the Plaintiff in January 2011 that the 2nd Defendant was reflected in the records of the 1st Defendant as the owner of his properties known as plot number 258 Eastleigh Section 7 being land reference number 36/VII/258 (original number 63/6) and plot number 120 of Section 1 being land reference number 367/AXI/1913 which he acquired in 1970 and 1967 respectively, the Plaintiff filed this suit after the 1st Defendant failed to correct its rates payment records to reflect the Plaintiff as the owner of the two parcels of land. The Plaintiff seeks declarations that these two plots on which he has erected rental houses belong to him and that the 1st Defendant should rectify its records to reflect his name as the proprietor.

2. Summons to enter appearance expired before they were served on the 2nd Defendant. The Plaintiff made an application to extend the validity of summons which was allowed on 7/2/2019. The 1st Defendant appointed W. S. Ogola to act for him on 6/2/2013. Musyoki Mogaka and Company Advocates filed a notice of change of advocates on 29/8/2014. Neither the 1st nor the 2nd Defendant filed a defence in this case.

3. The Plaintiff gave evidence. He produced copies of the conveyance dated 17/12/1944 together with the indenture made on 3/7/1967 in respect of plot number 120 Eastleigh Section One showing the Plaintiff purchased this piece of land in 1967. He also produced the indenture in respect of land reference number 36/VII/258 dated 15/10/1970 as evidence of his ownership of the land. The Plaintiff mortgaged L.R. No. 36/1/120 to Barclays Bank of Kenya on 12/5/1999.

4. The rates demand notes issued by the 1st Defendant in 2007 and 2010 were addressed to the Plaintiff. However, the rates demand dated 27/4/2011, May 2014, and 21/4/2017 reflected the 2nd Defendant as the owner of land reference number 36/1/120 yet the Plaintiff claims he never sold this parcel of land. The rates demand notes for L.R. No. 36/VII/258 dated 27/4/2011, 12/5/2014 and 21/4/2017 also reflect the 2nd Defendant as the owner of land.

5. The Plaintiff produced a copy of his advocates' letter dated 8/7/2011 pointing out the anomaly to the 1st Defendant's Chief Valuer regarding the parallel rates demand notices over the same pieces of land. The Chief Valuer requested the Plaintiff in his letter of 19/5/2011 to give details of the registered owners after lodging a complaint in the 1st Defendant's valuation section. The official searches done on L.R. No. 36/VII/258 on 16/6/2011 and on L.R. No. 36/1/120 on 15/6/2011 confirmed that the Plaintiff was still registered as proprietor of the two parcels of land. The Plaintiff also exhibited the decision made in David **Mutisya Mukumbi v Kennedy Wainaina Njenga [2014] eKLR** challenging the registration of the 2nd Defendant as proprietor of L.R. No. 36/VII/260, which is also situated in Eastleigh, Nairobi. The court held that the 1st Defendant's predecessor, the City Council of Nairobi had no interest to transfer in the suit land.

6. The court has considered the Plaintiff's written submissions together with the evidence adduced and is satisfied that the Plaintiff has proved his case on a balance of probabilities.

7. The court grants prayers (a), (b) and (c) of the plaint dated 11/12/2012. The Plaintiff is awarded the costs of the suit to be borne by the 1st Defendant.

Dated and delivered at Nairobi this 23rd day of July 2019

K.BOR

JUDGE

In the presence of: -

Mr. J. Mituga for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendants