



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 738 OF 2012

PETER XAVIER INDINDI OJIAMBO.....PLANTIFF

=VERSUS=

CITY COUNCIL OF NAIROBI.....DEFENDANT

JUDGEMENT

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

(a) A declaration that he is the lawful allottee of plot number H/15 (workshop)- Kayole Commercial zone E, F, D & H.

(b) An order of the court that the defendant, its servants, agents and/or employees be restrained by an injunction from howsoever from interfering with his plot number H/15 (workshop) Kayole Commercial Zones E, F, D & H.

(c) Costs and interests.

2. Upon being served with copies of plaint and served with copies of plaint and summons to enter appearance the defendant filed its defence dated 10th December 2012 on 24th January 2013. The defendant denied the contents of paragraph 2 to 8 of the plaint. It averred that it is a stranger to the contents of paragraph 9. It denied that a demand notice of intention to sue was made. The defendant prayed that the plaintiff's suit be dismissed with costs and interest. The defendant did not file any witness statement nor did they call any witnesses.

3. PW1, Peter Xavier Indindi Ojiambo, adopted his witness statement. He told the court that he was allocated the suit property through a letter of allotment dated 15th July 1993. He was shown the plot on the ground by a surveyor. He further stated that at the time, there was a kiosk fronting the suit property. Several letters were written to the defendant to have the kiosk removed but it was not removed until 1996. A temporary structure was constructed behind the kiosk, which turned out to be a church allowed by the defendant. He further stated that he made payments and was issued with receipts. That he has never taken possession of the plot and yet he is the lawful allottee.

4. In support of his case, the plaintiff relied on the following documents:-

- A copy of a beacon certificate dated 17th March 1994.
- A copy of the letter of allotment dated 15th July 1993
- A copy of the demolition memo dated 4th February 1997.
- A copy of the letter dated 19th July 2012.
- A copy of the map.
- A copy of the statement of account number 730048.
- Copies of receipts for payment. They were all produced as exhibits in this case.

5. When he was cross examined by the defence counsel the plaintiff stated that he could not take possession of the plot because of the kiosk fronting the suit plot. He could not access his plot. He further stated that the kiosk was licensed by the defendant and it was the duty of the

defendant to remove it. He told the court the defendant sanctioned and licensed the building of the church. He also told the court that he had been paying rent and rates and it's the duty of the defendant to evict the third parties.

6. I have considered the pleadings, the evidence on record, the written submissions tendered on behalf of the plaintiff. The issues for determination are:-

- (i) Whether the plaintiff is the legal owner of the suit plot.*
- (ii) Whether the defendant has sanctioned persons to trespass upon the suit property.*
- (iii) Whether the plaintiff is entitled to the prayers sought.*

7. The defendant did not tender any evidence. In its statement of defence it denies each and every allegation in the plaint. I find that the plaintiff's case has not been controverted. The documents he has produced as exhibits confirm that he is the lawful allottee of the suit plot. There is a letter from the defendant which confirms there was encroachment onto the suit property. The defendant failed to remove the trespassers. It failed to enforce the memo dated 4th February 1997. The plaintiff is entitled to have quiet possession, and occupation and use of the property without the interference from any other person. I rely on the case of **Reuben Warui Mwonge vs Josphat Aradi & 3 Others [2018] eKLR**, where Hon. Justice Mutungi ordered the defendants to vacate and deliver vacant possession of the suit plots to the plaintiff who was beneficial owner.

8. In conclusion, I find that the plaintiff has proved his case on a balance of probabilities and I enter judgment against the defendant as follows:-

- (a) That a declaration is hereby issued that he plaintiff is the lawful allottee of plot number H/15 (workshop) Kayole Commercial Zones E, F, D & H.*
- (b) That an order of permanent injunction is hereby issued restraining the defendant, its servants, agents and/or employees from interfering with the plaintiff's plot number H/15 (workshop) Kayole commercial zones E, F, D and H.*
- (c) The plaintiff shall have costs of the suit and interest.*

It is so ordered.

Dated, signed and delivered in Nairobi on this 9th day of October 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court Assistant