



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC NO. 43 OF 2015**

**FRASIER WANJIKU GACHUNU.....PLAINTIFF**

**VERSUS**

**DANIEL NGUGU GACHUNU..... DEFENDANT**

**JUDGEMENT**

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

*(a) A permanent injunction restraining the defendant, his servant, agent or any other party acting on his behalf from interfering, trespassing, into or demolishing any fence or wall erected on the suit premises LR No. Dagoretti/Waithaka/1415.*

*(b) A declaration that the suit land L.R. No. Dagoretti/Waithaka/1415 belongs to the plaintiff.*

*(c) Removal of the caution placed on the suit land L. R No. Dagoretti/Waithaka/1415.*

*(d) An order compelling the defendant to return to the plaintiff the original title deed LR No. Dagoretti/Waithaka/1515.*

*(e) Costs of this suit and interest.*

*(f) Any other remedy the honourable court finds just to grant.*

2. Upon being served with copies of plaint and summons to enter appearance the defendant entered appearance through the firm of S. M. Righa & Company Advocates on the 6<sup>th</sup> December 2015 and filed a statement of defence dated 16<sup>th</sup> March 2015.

3. The defendant was served with a hearing notice for 21<sup>st</sup> May 2019 but neglected to appear. The court was satisfied that the defendant had been duly served and directed that the matter proceeds exparte.

4. It is the plaintiff's case that she is the registered owner of Land Parcel Number Dagoretti/Waithaka/1415. She inherited it from her late husband Norman Gachunu Kaberuri. She told the court that she sold a portion of the said land four years ago. She has not been able to transfer it because the defendant placed a caution on the said title. She prays that the land registrar be compelled to remove the said caution so that she can complete the transaction.

5. In support of her case, the plaintiff relied on the documents in the list of documents dated 23<sup>rd</sup> January 2015. The plaintiff is the administrator of the estate of Norman Gachunu Kaberuri. The certificate of confirmation of grant was issued on 29<sup>th</sup> November 2006. If the defendant had any issue with the distribution of the deceased's property then he ought to have raised an objection during the succession proceedings.

6. Section 24 of the Land Registration Act provides that:

***“The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging to appurtenant thereto”.***

The suit property therefore belongs to the plaintiff absolutely.

7. The plaintiff's case has not be controverted. As per the confirmation of grant the defendant was bequeathed an equal share of the deceased's estate. He therefore has no claim to the suit property. His statement of defence amounts to mere denials.

8. The plaintiff being the registered owner of the suit property is entitled to quiet and peaceful possession of the same.

**Section 26(1)** of the Land Registration Act 2012 provides that:-

***“The certificate issued by the Registrar upon registration, or to a purchaser or land upon a transfer or transmission by the proprietor shall be taken by a court as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner”***

The defendant has no legal interest in the suit property hence the caution lodged by himself was wrongful and without reasonable cause.

9. In conclusion, I find that the plaintiff has proved her case on a balance of probabilities as against the defendant. Accordingly, judgment is entered in her favour as follows:-

***(a) A permanent injunction his hereby issued restraining the defendant, his servants, agents, or any other party acting on his behalf from interfering, trespassing into, or demolishing any fence or wall erected on the suit premises Land Reference Number Dagoretti/Waithaka/1415.***

***(b) A declaration is hereby issued that land reference number Dagoretti/Waithak/1415 belongs to the plaintiff.***

***(c) The land registrar is hereby directed to remove the caution placed on LR No. Dagoretti/Waithaka/1415.***

***(d) Costs of the suit and interest.***

It is so ordered.

**Dated, signed and delivered in Nairobi on this 11<sup>th</sup> day of December 2019.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Simiyu for Ms Wachira for the Plaintiff

No appearance for the Defendant

Kajuju - Court Assistant