



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**MILIMANI LAW COURTS**  
**ELC NO. 302 OF 2010**

GABRIEL JOSEPH GATUMBI.....1<sup>ST</sup> PLAINTIFF

MWANGI BORE .....2<sup>ND</sup> PLAINTIFF

HAWKINS NGALI MGANGA.....3<sup>RD</sup> PLAINTIFF

=VERSUS=

STEPHEN NDUATI MUHINJA.....1<sup>ST</sup> DEFENDANT

WILKIS OBIERO OTIENO.....2<sup>ND</sup> DEFENDANT

CITY COUNCIL OF NAIROBI.....3<sup>RD</sup> DEFENDANT

COMMISSIONER OF LANDS.....4<sup>TH</sup> DEFENDANT

**JUDGEMENT**

1. The plaintiffs filed this suit against the defendants seeking the following reliefs:-

*a. A permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants, their servants, agents and/or any other person acting on their behalf from constructing or in any manner dealing with or interfering with title No. NBI/Block 62/1238.*

*b. A declaration that the allocation and subsequent issuance of title No. NBI/Block 62/1238 is illegal, null and void and that the portion of land comprised in title No. NBI/Block 62/1238 is public land.*

*c. Title No. NBI/Block 62/1238 be revoked and/or cancelled and the register relating to title No. NBI/Block62/1238 be rectified.*

*d. The 1<sup>st</sup> and 2<sup>nd</sup> defendants be ordered to demolish any such construction erected on title No.NBI/Block 62/1238 and in default the plaintiffs be allowed to do so.*

*e. The court does grant any such other relief as it may deem just to do.*

2. The plaintiff contemporaneously filed an application in which they sought a temporary injunction

against the first and second defendants and a permanent injunction against all the defendants. The application for injunction was heard and in a ruling delivered on 9<sup>th</sup> February 2011 Justice Mbogholi Msagha stopped any further construction of the house which was being constructed on the suit property. The plaintiffs were ordered to file an undertaking as to damages within 7 days . The plaintiffs filed an undertaking as to damages on 16<sup>th</sup> February 2011.

3. This case was certified as being ready for hearing on 24<sup>th</sup> March 2016. Parties were directed to take a date for hearing. The case was allocated a hearing date on 6<sup>th</sup> February 2017. The case was to proceed for hearing on 30<sup>th</sup> March 2017. On 30<sup>th</sup> March 2017, the case could not proceed as the plaintiffs were not in court. It was adjourned to 11<sup>th</sup> May 2017. The case could not proceed on 11<sup>th</sup> May 2017 again because the plaintiffs were not in court. The case was adjourned to 26<sup>th</sup> June 2017. The following day, the parties were given 21<sup>st</sup> November 2017 for hearing. On this day neither the plaintiffs nor their advocates were in Court. The suit was dismissed for non-attendance.

4. The matter was set down for hearing as to the undertaking for damages. Mr Ochieng for the second defendant submitted that when the injunction orders were granted on 9<sup>th</sup> February 2011, the second defendant was restrained from carrying out any further construction. The plaintiffs were ordered to file an undertaking as to damages within 7 days. The plaintiffs complied with the court order and filed an undertaking as to damages on 16<sup>th</sup> February 2011.

5. Mr Ochieng submitted that the second defendant had in his bundle of documents filed a valuation report which was carried out on the incomplete building. The valuer assessed the expected rental income from the property on completion at Kshs.18,000/= per month . These are the damages which the second defendant is seeking with effect from 9<sup>th</sup> February 2011.

6. I have looked at the valuation report by M/s Catenary Valuers which was done on 25<sup>th</sup> July 2012. The incomplete house was a single storey house which was 75% complete. Upon completion, the house would have attracted a monthly rent of Kshs.18,000/= . Had the second defendant not been enjoined by the plaintiffs, he would be earning rent from the house he was putting up. The plaintiffs have to pay him for the loss. I therefore enter judgement for the second defendant against the plaintiffs jointly and severally in the sum of kshs.18,000 per month with effect from 1<sup>st</sup> March 2011 until payment in full. The plaintiff shall also pay the costs of this suit and interest on the above amount to the second defendant.

Dated, Signed and Delivered at *Nairobi* this **18<sup>th</sup>** day of *January, 2018*.

**E. O. OBAGA**

**JUDGE**

In the presence of ;-

Mr Ogembo for Mr Ochieng Omollo for 3<sup>rd</sup> Defendant

Court Assistant: Phyllis

**E. O. OBAGA**

**JUDGE**