



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 179 OF 2011

SILAS MWENDA.....PLAINTIFF

=VERSUS=

CATHERINE WANGUI GITARI.....DEFENDANT

JUDGEMENT

1. The Plaintiff filed an Amended Plaint on 17th June 2011, in which he claims the following reliefs:-

i. A perpetual and permanent injunction restraining the defendant, her agents, servants employees and or assignees from further trespassing, destroying claiming and or interfering with the plaintiffs property being plot no.3627 held in Trustee for Kiambu Dandora Farmers' Co-operative Limited LR No. 11379/3 in any manner inconsistent with the plaintiffs right of possession.

ii. A declaration that the plaintiff is the legal proprietor of property being plot no.3627 held in trustees for Kiambu Dandora Farmers Co-operative Limited LR No. 11379/3 and the defendant has no power or right to interfere with his peaceful and/or quiet possession of the same.

iii. Costs of the suit.

2. The defendant who had filed defence to the plaintiff's claim did not attend court during the hearing. Her lawyer who had filed an application to cease acting for her but which application had not been heard was in court on the date the plaintiff testified but chose to go away and therefore did not take part in the proceedings. The hearing therefore proceeded ex-parte.

3. The plaintiff testified that he was allocated two plots by the Trustees of Kiambu Dandora Farmers Company Limited by virtue of him being a shareholder. He was given a letter of allocation confirming that he had been given plot Nos. Z13/3626 and Z13/3627. He settled on plot Z13/3626 where he lives to date. When he wanted to build rental houses on plot Z13/3627, the defendant came in company of hired goons who demolished the structures which he had started putting up.

4. The plaintiff went and reported the incident to Mowlem Police Post and to the area chief. The area chief was not co-operative with him as he had sided with the defendant. The chief promised to sort out the issue later but he never did that.

5. The Plaintiff called John Mburu Karegu one of the directors of Kiambu Dandora Farmers Company Limited. This witness testified that he knew the plaintiff as the owner of the two plots which were

allocated to him in 2001. He testified that the two plots are comprised in a larger parcel of land known as LR 11379/3 which is 818 acres. This parcel was subdivided and the plaintiff was allocated his two plots. This witness stated that he did not know anything about Makongeni settlement scheme where the defendant claims to have bought her plot from.

6. I have gone through the documents produced by the plaintiff. The plaintiff's evidence is uncontroverted. The Plaintiff produced letter of allocation which confirms that he was allocated two plots. He settled on plot Z13/3626 and when he wanted to put up rental houses on plot Z13/3627, the defendant came and claimed that that was her plot which is plot 220 she bought from Makongeni settlement scheme.

7. The director of Kiambu Dandora Farmers Co.Ltd gave evidence in support of the plaintiff. He produced a copy of the mother title and a subdivision plan where the larger parcel was divided into zones.

The Plaintiff was given two plots in zone 13. This director stated that Makongeni Settlement Scheme is not within the plot owned by Kiambu Dandora Farmers Co.Ltd and that he does not know it. I find that the plaintiff has proved his case on a balance of probabilities. I allow the same in terms of prayers **(i)**, **(ii)** and **(iii)** of the amended plaint dated 16th June 2011 and filed in Court on 17th June 2011.

Dated, Signed and delivered at **Nairobi** on this **16th** day of **January, 2018**.

E.O.OBAGA

JUDGE

In the presence of :

Mrs Mwadumbo for Mrs Wambugu for defendant

Mr Jaoko for Mr Mugambi for Plaintiff

Court Assistant: Hilda

E.O.OBAGA

JUDGE