



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
MILIMANI LAW COURTS
ELC NO. 1513 OF 2016

PETER GATHURI KARINGU.....PLAINTIFF

=VERSUS=

STEPHEN GATHUKU INYANJUI.....1ST DEFENDANT

THE ASSISTANT COUNTY

COMMISSIONER (NGENDA WARD).....2ND DEFENDANT

JUDGEMENT

1. The plaintiff is the registered owner of LR No. Ngenda/ Mutomo/T.225. He filed this suit against the defendant in which he sees orders of eviction and removal of a caution which was lodged against the title by the defendant.
2. The plaintiff states that the defendant trespassed into the suit property and created structures on it. The plaintiff has tried to ask the defendant to move out of the suit property to no avail. This is why he filed this case.
3. The defendant testified that the suit property was purchased by his father in 1964 from one Nicholas Kiminda who was an assistant Chief. The defendant was initially staying with his father at Kahawa Garrison. He moved into the suit property with his father who later moved to Nakuru as the suit property was small.
4. The defendant married in 1974 while still in the suit property. He still lives there to date. He does zero grazing on the quarter acre plot.
5. I have considered the evidence adduced by the plaintiff and the defendant. There is no contention that the defendant is staying on the suit property. The issues which are for determination is whether the defendant has a right to be on the suit property and whether the restriction registered against the title should be removed.
6. Title to the suit property was issued to the plaintiff on 10.11.2010. The official search shows that a restriction was registered against the title on 27.9.2016 at the instance of the Assistance County Commissioner through letter dated 26.9.2016.
7. The defendant filed his documents which show that he filed an originating summons in Kiambu High

Court on 30.11.2016 in which he seeks to have the suit property by way of adverse possession. He also filed a transaction of an agreement in Kikuyu language which shows that one Kinyanjui son of Mwaura bought a plot from Nicholas Kiminda son of Kamau for Kshs.450/= on 30.10.1964. The plot is not described in the agreement.

8. The plaintiff has demonstrated that he is the registered owner of the suit property. The defendant did not call any evidence to confirm his allegations on why he is on the suit property. If his father bought land from Nicholas Kiminda he cannot claim land from the plaintiff who is not the said Nicholas Kiminda. A certificate of title shall be taken as prima facie evidence of ownership of a property. I did not have the benefit of seeing the letter of 26.9.2016 by the Assistant County Commissioner to see the reasons why he had to cause a restriction to be registered against the title.

9. In the absence of any reasons why the restriction was registered and in view of the fact the plaintiff is the registered owner of the suit property, I find that the plaintiff has proved his case on a balance of probabilities. I enter judgement for him against the first defendant for eviction from LR No. Ngenda/Mutomo/ T.225. The restriction which was registered on LR No. Ngenda/Mutomo/T.225 should be removed forthwith. Costs of this suit to be borne by the first defendant.

Dated, Signed and delivered at Nairobi on this 5th day of February ,2018.

E.O.OBAGA

JUDGE

In the presence of :

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Court Assistant : Hilda

E.O.OBAGA

JUDGE