



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO. 738 OF 2005

JAMES NJOMO WAWERU.....PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI.....DEFENDANT

CHRISTOPHER MATATA MUSYOKA T/A

NYANGI SCRAP METAL.....INTERESTED PARTY

JUDGMENT

The plaintiff brought this suit by way of a plaint dated 15th June, 2005. The plaintiff averred that he is the owner of all those parcels of land known as Plot Numbers 51,52 and 53 situated at Kayole shopping center, Nairobi. The plaintiff averred that the said parcels of land were allocated to him by the defendant and after making the necessary payments that were required he took possession thereof and commenced construction with the approval of the defendant. The plaintiff averred that on 14th June, 2005, the defendant issued him with a notice demanding that he demolishes the perimeter wall that he had constructed around the said three (3) parcels of land. The plaintiff averred that the defendant alleged that he had encroached on Plot No. 53(hereinafter referred to as “the suit property”). The plaintiff averred that he is the owner of the suit property and as such the defendant’s notice aforesaid was illegal and was meant to harass him.

The plaintiff sought judgment against the defendant for:

- a) An injunction restraining the defendant its agents, servants and or anyone claiming through it from entering, allocating to someone else, demolishing buildings, walls, and or in any other manner interfering with the plaintiff’s quite enjoyment and ownership of Plot Number 53 situate at Kayole shopping center(“the suit property”).
- b) A declaration that the plaintiff is the lawful and legal owner of the suit property.

The defendant appointed a firm of advocates who filed a notice of appointment on 21st June, 2005. The said neither entered appearance nor filed a statement of defence. On application by the plaintiff, interlocutory judgment in default of appearance was entered against the defendant on 15th May, 2006. On 7th April, 2008, CHRISTOPHER J. MATATA MUSYOKA was added to the suit as interested party. The interested party filed witness statements and list of documents on 6th November, 2012 and 3rd June, 2014 respectively. On 17th September, 2014 the advocate for the interested party informed court that the

interested party had passed away and that he required time to substitute him with his legal representative. As at the time this suit came up for hearing, the deceased interested party had not been substituted with his legal representative. In the circumstances, his interest in the suit abated.

The suit came up for formal proof on 21st September, 2017 when the plaintiff gave evidence and called one witness. In his evidence, the plaintiff adopted the contents of his witness statement dated 25th August, 2011. The plaintiff testified that he made an application to the defendant to be allocated a plot and in 1993 he was allocated the suit property. He produced as P-Exhibit 1 and P-Exhibit 2 copies of a letter of allotment dated 22nd November, 1993 and various receipts for the payments he made to the defendant in respect of the suit property. He stated that he was subsequently issued with a beacon certificate on 4th May, 2001. He produced the same in evidence as P-Exhibit 3. The plaintiff stated that he prepared building plans which were duly approved by the defendant. He stated that on 23rd September, 2004, he was issued with a lease by the defendant in respect of the suit property which he produced in evidence as P-Exhibit 5. He stated that while he was continuing with construction, he received a letter dated 9th June, 2005 from the defendant demanding that he stops construction on the suit property on the ground that the suit property belonged to someone else. He stated that the letter was followed by a formal notice under the building by laws dated 14th June, 2005. He produced the said letter and notice in evidence as P-Exhibit 6(a) and P-Exhibit 6(b) respectively.

The plaintiff told court that when he was allocated the suit property by the defendant, he was not aware that there were disputes in respect thereof. He stated that he did a search in 2010 which confirmed that he was the owner of the suit property and that the property was on the plan prepared by the City Council of Nairobi. The search confirmed further that he had put up a perimeter fence around the suit property and that the property was on the ground and a lease in respect thereof had been executed. The plaintiff stated that he was in possession of the suit property and that he had put up temporary structures thereon. The plaintiff stated that he was paying land rates for the suit property and urged the court to grant him judgment as prayed in the plaint.

On examination by the court, the plaintiff stated that no one had come to the suit property to lay a claim in respect thereof and that the entity named in the defendant's letter dated 9th June, 2005 as the owner of the property had not been to the property.

The plaintiff's witness was HILDA WAITHERA NJOMO (PW2). PW2 was PW1's wife. In her evidence, she also adopted the contents of her witness statement dated 26th June, 2013 as her evidence in chief. She told the court that that she is the one who conducted a search on the title of the suit property. She produced a copy of the search results in evidence as P-Exhibit 7. She stated that the plaintiff was the owner of the suit property and that he was in occupation of the same. She corroborated the evidence of the plaintiff that the suit property had a perimeter wall and a semi-permanent structure.

I have considered the plaintiff's claim as pleaded and the evidence tendered in proof thereof. This suit was not defended. The evidence that was adduced by the plaintiff was not controverted. The plaintiff's title to the suit property was not contested. The plaintiff's testimony that the defendant had demanded that he demolishes the perimeter wall that he had put up around the suit property was not controverted. The evidence regarding the defendant's threat to demolish the said wall was also not controverted. In the absence of any evidence from the defendant, the only conclusion this court can reach is that the defendant had no justifiable cause for demanding the demolition of the plaintiff's perimeter wall.

I am satisfied that the plaintiff has proved his claim against the defendant. The plaintiff has proved that he is the owner of the suit property and that he acquired the same from the defendant lawfully. The plaintiff has also proved that the perimeter wall that he has put up around the suit property was approved by the defendant. In the circumstances, the demand that was made by the defendant upon the plaintiff to demolish the said perimeter wall was unlawful.

For the foregoing reasons, I am satisfied that the plaintiff is entitled to the prayers sought in the plaint. I therefore enter judgment for the plaintiff against the defendant on the following terms:

1. I declare the plaintiff to be the lawful owner of Plot No. 53 situated at Kayole Shopping Center, Nairobi.

2. An injunction is issued restraining the defendant by itself or through its servants, employees or agents from demolishing the perimeter wall that the plaintiff has put up around Plot No. 53 situated at Kayole Shopping Center, Nairobi.

3. The plaintiff shall have the costs of the suit as against the defendant.

Delivered and Signed at Nairobi this 12th day of April 2018.

S.OKONG'O

JUDGE

Judgment read in open court in the presence of:

N/A for the Plaintiff

N/A for the Defendant

Catherine Court Assistant