

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO. 510 OF 2012

HARUN G. MWANGI.....PLAINTIFF

-VERSUS-

ZACHARIA KAREGA MUCHUNU.....DEFENDANT

JUDGMENT

The Plaintiff brought this suit on 15th August, 2012 claiming that he is and was at all material times the owner of all that parcel of land known as Plot No. 116, Kariobangi South Sector VI (hereinafter referred to as “the suit property”). The Plaintiff averred that the suit property was allocated to him by the City Council of Nairobi on 21st October, 1992 and that he took possession and commenced development thereon which stalled.

The Plaintiff averred that in the year 2005 the Defendant entered the suit property, fenced off the same and put up temporary structures thereon. The Plaintiff averred that despite demand and notice of intention to sue, the Defendant had continued with his illegal occupation of the suit property thereby making the filing of this suit inevitable. The Plaintiff sought judgment against the Defendant for among others, an order of eviction and a permanent injunction restraining the Defendant from interfering in any manner with the suit property.

The Defendant filed a statement of defence on 4th October, 2012 denying the Plaintiff’s claim in its entirety. The Defendant averred that he is a stranger to the suit property and that the parcel of land owned by him and which he had developed and occupied since 1999 was Plot No. 228 Kariobangi South Sector VI (hereinafter referred to as “Plot No. 228”). The Defendant denied that he entered the suit property illegally as claimed by the Plaintiff and contended that the Plaintiff’s suit is bad in law and discloses no or any reasonable cause of action. The Defendant urged the court to dismiss the Plaintiff’s suit with costs. The Plaintiff filed a reply to defence on 25th February, 2013 in which he reiterated that he was the owner of the suit property which the Defendant claimed to be Plot No. 228.

The suit came up for hearing on 21st March, 2017 when the Defendant did not appear. The Plaintiff gave evidence and closed his case without calling any witness. In his evidence, the plaintiff reiterated the contents of the plaint. The Plaintiff produced in evidence among others, a copy of a letter of allotment of the suit property issued to him by the Nairobi City Commission on 21st October, 1992, a copy of a receipt dated 21st October, 1992 for Kshs.8,640/= issued to him by the Nairobi City Commission in respect of the payment he made for Stand Premium and Annual rent for the suit property. The Plaintiff also produced in evidence a copy of the letter of acceptance of the allotment dated 10th December, 1993 and a copy of the site map for the suit property. After the close of the Plaintiff’s case, the Plaintiff’s advocates made closing submissions in writing.

I have considered the Plaintiff’s claim, the defence filed by the Defendant, the evidence on record and the submissions by the Plaintiff’s advocates. I am satisfied that the Plaintiff has proved his claim against the Defendant on a balance of probabilities. The Plaintiff has proved that, the suit property was allocated to him by the Nairobi City Commission (now defunct) on 21st October, 1992, he accepted the allotment and paid the requisite charges. Although the Defendant claimed that he had not trespassed on the suit property and that the parcel of land that was in his occupation was Plot No. 228, he did not adduce any evidence showing that he owns Plot No. 228. No evidence was placed before the court showing that Plot No. 228 was allocated to the Defendant or his predecessor in title by the Nairobi City Commission or Nairobi City Council. There was also no evidence that the allotment if any was accepted and the requisite charges paid. Since the Defendant did not tender any evidence at the trial, the evidence that was adduced by the Plaintiff to the effect that it is the suit property that the Defendant is referring to as Plot No. 228 and that the Defendant is in occupation of the suit property without his permission was not controverted.

I am satisfied that the Plaintiff has established that the Defendant is a trespasser on the suit property. I therefore enter judgment for the Plaintiff against the Defendant in terms of prayers (a), (b) and (c) of the Plaint dated 20th June, 2012. The Defendant shall vacate and handover possession of the suit property to the Plaintiff within sixty (60) days of service of a decree extracted from this judgment in default of which the Plaintiff shall be at liberty to apply for his forceful eviction. General damages was not proved and as such I decline to award the same. The plaintiff shall have the costs of the suit.

Dated and delivered at Nairobi this 21st day of June, 2018

S. OKONG’O

JUDGE

Judgment read in open court in the presence of

Mr. Mwariri for the Plaintiff

No appearance for the Defendant

Catherine Court Assistant