



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 712 OF 2016

SAMUEL KUNG'U MUTURI.....PLAINTIFF

=VERSUS=

ROBINSON MUNGAI GAICHUHIE.....DEFENDANT

JUDGMENT

1. On 27/6/2016, the plaintiff, Samuel Kung'u Muturi, brought this suit contending that he is the registered proprietor of Land Parcel Numbers Karai/Karai/2859, 2860, 2861, 2862, 2863, 2864, 2865, 2866, 2867 and 2668 each measuring approximately 0.09 hectares. He stated that the said parcels were subdivisions out of Land Title Number Karai/Karai/1496 which he bought from one Patrick Mungai Njuguna in 1997. He contended that the defendant had wrongfully caused restrictions to be registered against the said titles. He sought the following orders:-.

a. The restriction lodged and registered against Land Parcel Nos Kari/Karai 2859, Karai/Karai/2860, Karai/Karai/2861, Karai/Karai/2862, Karai/Karai/2863, Karai/Karai/2864, Karai/Karai/2865, Karai/Karai/2866, Karai/Karai/2867 and Karai/Karai/2868 by the defendant herein be and is hereby lifted and/or removed and its registration be canceled forthwith.

b. A permanent injunction do issue restraining the defendant from encumbering the plaintiff's aforesaid parcels of land or from in any way interfering with the plaintiff's quiet and peaceful enjoyment of his aforesaid parcels of land.

c. General damages.

d. Costs of this suit.

e. Interest on (c) and (d).

2. On 2/9/2016, the plaintiff brought an application seeking leave to serve summons to enter appearance through an advertisement in the newspaper. On 12/1/2017, the Deputy Registrar of this Court allowed the plaintiff to serve the summons through a notice in either the Daily Nation or the Standard Newspaper. Subsequently, on 23/2/2017, the plaintiff placed a notice in the Standard Newspaper.

3. Satisfied that summons had been served, the Deputy Registrar listed this matter for hearing directions by this court. The case was set down for hearing on 1/10/2018.

4. At the hearing, the plaintiff testified that he was the registered proprietor of the suit properties. He stated that he purchased Land Title Number Karai/Karai/1496 from one Patrick Mungai Njuguna in 1997 and the land was transferred into his name. He therefore subdivided the said parcel of land into ten parcels, each measuring 0.09 hectares. Subsequent to the purchase, Patrick Mungai Njuguna died and his family carried out succession. The land sold to the plaintiff was not listed as part of the estate of the late Patrick Mungai Njuguna.

5. He further testified that on or about 6/8/2015, the defendant caused restrictions to be registered against the suit properties. Efforts to have the restrictions removed had been in vain. Consequently, the plaintiff brought this suit seeking among other prayers, an order removing the restrictions. The plaintiff's testimony was uncontroverted. He produced various exhibits, among them official searches.

6. I have considered the pleadings and the evidence in this suit. The plaintiff is the registered proprietor of the suit properties. The official searches produced as evidence indicate that in August 2015 the defendant caused restrictions to be registered against the titles. Through a notice in the Standard Newspaper the defendant was served with summons to enter appearance. He did not enter appearance. He similarly did not file a defence.

7. In the absence of defence and/or any controverting evidence or justification as to why the restrictions should remain in place, the court is satisfied that the plaintiff has made out a case on a balance of probabilities. Consequently, prayers (a), (b) and (d) of the plaint are granted. I

will not award damages because no basis was laid for that limb of the prayers. The plaintiff shall have costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 29TH DAY OF OCTOBER 2018.

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B M EBOSO

JUDGE

In the presence of:-

Mr Keya holding brief for Mr Juma for the Plaintiff

Ms June Nafula - Court clerk