



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NO.458 OF 2016

SIMON KANYOKO.....PLAINTIFF

VERSUS

THE CHIEF LAND REGISTRAR.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

JUDGEMENT

1. The Plaintiff filed this suit against the defendants claiming the following reliefs:-

a) An order invoking Section 105 of the Land Registration Act No. 3 of 2012 compelling and directing the 1st defendant to issue the Plaintiff with a certificate of title thereto.

b) An order be issued by this Honourable Court invoking it's inherent jurisdiction directed at the 1st defendant compelling him to issue the plaintiff with a certificate of title for the suit property.

c) General damages

d) Costs of this suit

e) Interest at Court rates

f) Any other or further relief as this court may deem just and fit to grant.

2. The defendants filed a defence on 18th September 2017 in which they denied the claim by the plaintiff; that in the absence of a folio which is kept by the first defendant in respect of titles kept under Government Lands Act, (Now repealed) they cannot ascertain who the owner of the suit property is.

3. When this case came up for hearing, the defendants who were aware of the hearing date were not represented in Court. The hearing therefore proceeded ex-parte. The plaintiff adopted his statement, signed on 26th April 2016 and filed in court on 4th May 2016. The plaintiff states that on 22nd August 1977, he purchased LR No.330/463 (suit property) from its previous owners who were James Kibe Githahu and Judy Muthoni Githahu. The plaintiff took possession of the suit property which had a residential house on it. He converted the residential house into a nursery school which he operates to-date. He also built a block of flats on the other section of the suit property. He has since had uninterrupted possession of the suit property. He has been paying all rates which are up to date.

4. In the year 2012, he wanted to get a loan from Barclays Bank of Kenya to enable him develop the property further. He was asked to provide the original title. He tried to look for the title in his Ridgeways House but he could not find it. He instructed his lawyers to pursue a duplicate title. When he went to the offices of the lands ministry, he applied for a search using a copy of indenture which he had retained. He was advised that ownership of the suit property could not be ascertained as the folio where ownership of a property are kept was missing from the records of the first defendant. It is on this basis that the plaintiff is seeking for an order compelling the first defendant to issue him with a certificate of title based on documents he has which shows that he is the owner of the suit property.

5. I have gone through the documents filed by the plaintiff. There is no doubt that the suit property belonged to James Kibe Githahu and Judy Muthoni Githahu. This property was transferred to the plaintiff on 22nd August 1977. There are a number of correspondence filed by the plaintiff confirming that he is the proprietor of the suit property. The plaintiff had reported loss of his title to Runda Police Station and

was issued with an abstract.

6. The plaintiff had previously taken facilities using the property as security. He is the one paying rates to date. The defendants are not denying the plaintiff's contention that he is the owner. The defendants are simply saying that in the absence of a folio, they cannot say who owns the property. There is no person who has come up to claim the same property. The plaintiff has documents in his possession showing that the property belongs to him. It is the plaintiff who has been in possession of the suit property since he purchased it. It is therefore not difficult for the first defendant to issue him with a duplicate title based on the documents he has. The Plaintiff is not responsible for the missing folio at the first defendant's offices as he has no control over the same.

7. The plaintiff is claiming general damages from the defendants for negligence. I do not think that the plaintiff is entitled to general damages. The plaintiff is the one in possession of the suit property. Whereas the first defendant is under obligation to keep its records properly, it cannot be penalised in damages when there is no basis for the same. I therefore decline to grant any general damages. However as the plaintiff has proved on a balance of probabilities that he is the owner of the suit property , I allow his claim against the defendants in the following terms:-

a. An order is hereby given compelling the Chief Land Registrar to issue the plaintiff with a duplicate certificate of title in respect of LR No.330/463.

b. Costs of the suit.

Dated, Signed and delivered at Nairobi on this 26th day of **November, 2018.**

E. O. OBAGA

JUDGE

In the presence of:-

M/s Nyabuto for Plaintiff

Court Assistant: Hilda

E.O.OBAGA

JUDGE