



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENT AND LAND COURT DIVISION

ELC.NO.524 OF 2012

PETER NGUGI NDAHI.....PLAINTIFF

=VERSUS=

GEORGE GICHUHI.....1st DEFENDANT

MR. WAWERU.....2nd DEFENDANT

MR. ONGORO (*Chairman*).....3rd DEFENDANT

MR. ALI MWANGI (*Vice Chairman*)....4th DEFENDANT

GEORGE OBWONJI (*Secretary*).....5th DEFENDANT

MR. HASSAN NGANGA(*Treasurer*)....6th DEFENDANT

All sued individually as Officials of Hurlingham Development Scheme in Kayole North, Nairobi.

J U D G E M E N T

By an *Amended Plaintiff* dated *24th September 2012*, the Plaintiff herein, *Peter Ngugi Ndahi* has sued the Defendants herein individually and jointly as officials of *Hurlingham Squatter Development Scheme* in *Kayole North, Nairobi* and has sought for various orders. The Plaintiff prays for judgement against the Defendants jointly and severally for:

I. A declaration that Plot no.989 being part of the Hurlingham Squatters Development Scheme, represented by Certificate no.887 from Hurlingham squatters development Scheme lawfully and rightfully belongs to the Plaintiff and the Plaintiff is and should rightfully be in occupation of the said plot.

II. An order for the removal of any other occupant of the said plot and in particular the 2nd Defendant herein if still in occupation of Plot no.989 Hurlingham Squatters Development Scheme and an order of and the demolition of any structures erected by Defendant and being on the plot.

III. A permanent injunction restraining the Defendant(s) acting by themselves, himself, individually or jointly or through his/their servants, agents or employees or anybody claiming

any right or interest through them from entering, trespassing into, and from selling, transferring and from building any structure or house on the stated plot.

IV. Special damages of Kshs.200,000/= in terms of the value of the house demolished and carted away and the development underway, the materials on site and the cost of labour and attendant construction cost already incurred in the development of the plot.

V. Costs of this case plus interest.

In his claim, the Plaintiff has alleged that at all material times, he has been the owner and occupier of **Plot no.989** situated within the

Hurlingham Squatters Development Scheme in **Kayole North** Nairobi. Further that the Plaintiff and other scheme members had acquired the plots from the Government and the City Council in Squatters Relocation Programme in the year **2002** and upon payment he was issued with a certificate of ownership **No.887**. He alleged that since the year **2002**, he developed the suit property using Mabatis but in the year **2012**, he commenced construction of a stone house therein. Further that upon commencement of his construction in the year **2012**, the Scheme Chairman, **3rd** Defendant herein sought for payment of security and protection dues which he reluctantly paid totaling to **Kshs.20,000/=**. It was his further allegation that on **30th June 2012**, he was called by his son and informed that there was a stranger who was claiming to have purchased the plot and intended to demolish the house and the on-going construction. That the Plaintiff informed the Defendants that he was the owner and occupier of the plot in question for about **10 years** and he had not sold it to anyone and any attempt to sell it was a fraud.

It was his further allegation that on **3rd August 2013**, the **1st** and **2nd** Defendants invaded the suit plot, flushed out the Plaintiff and demolished the house and structure that was under construction on allegation that they had purchased the said plot from the **3rd** to **6th** Defendants who are officials of the Scheme. Thereafter the **2nd** Defendants using the **1st** Defendant as a contractor commenced construction upon the suit plot. The Plaintiff averred that the Defendants actions amounted to fraud and he particularized the said fraud in paragraph 13 of the Plaintiff.

Further that even after sending demands to the Defendants, they have not stopped the said trespass and fraudulent actions. The Plaintiff urged the court to allow his claim.

Though the Defendants were served with the Summons to Enter Appearance on **26th November 2013**, as is evident from the Affidavit of Service of **Bernard Kinyanjui**, but they did not enter Appearance nor file Defence and interlocutory Judgement was entered against the Defendants on **11th November 2014**. The matter proceeded for Formal Proof on **2nd November 2015**, when the Plaintiff gave evidence for himself and called no witness.

PW1 – Peter Ngugi Ndahi adopted his witness statement entirely and further stated that he bought a plot in Hurlingham at Kayole North. The said plot was within **Hurlingham Squatters Scheme** which was **plot no.989**. He testified that he was issued with a Certificate No.887 and he subsequently built a Mabati house on the plot. He further started to develop the plot in the year **2012**, when some youths went and told him to stop the construction. It was his testimony that he went to the offices of the Scheme and he was asked to pay **kshs.10,000/=**. He paid the same and once more when he resumed construction, he was ordered to stop. The Plaintiff again went to the Scheme's office and met the Chairman who asked him for **kshs.30,000/=**. It was his testimony that he did not have the said money and in **June 2012**, he was told that the house was demolished because the plot had been sold to one **George Gichuhi**. Further that PW1 reported the matter to the Police but on **2/8/2012**, his family was evicted from the said property. He produced the photographs of the demolished house as exhibits in court.

The Plaintiff also testified that the said **George** now lives on the said suit property and that Plaintiff has been evicted from the suit property. He urged the court to allow his claim. He also produced various exhibits in court.

The Plaintiff through the **Law Firm of Namada & Co. Advocates** filed Written Submissions on **17th May 2016**, and urged the court to find that he has proved his case against the Defendants on a balance of probabilities. He relied on various decided cases.

The court has now carefully considered the available evidence and the exhibits thereto. The court has also considered the Written Submissions and the cited authorities and the court makes the following findings;

The Plaintiff has alleged that he is a member of Hurlingham Squatters Development Scheme and that he was the owner of plot **no.989** on the said Scheme. He produced the Certificate of ownership which was no.887 as exhibit no.1. The said certificate is in the name of **Peter Ngugi Ndahi**. Further the Plaintiff testified that the officials of the said Hurlingham Squatters Development illegally sold this plot **no.989** to **George Gichuhi**, the 1st Defendant herein who has now illegally evicted the Plaintiff from the suit property, demolished his structure and has now illegally occupied the same. It was the Plaintiff's testimony that the 1st Defendant was assisted to take over the Plaintiff's plot by the other Defendants who were officials of the **Hurlingham Squatters Development Scheme**.

The Defendants herein did not enter appearance nor file their defences. The Plaintiff's testimony remains unchallenged. The Plaintiff produced photographs showing the demolished structure. That bit of evidence is also uncontroverted. If indeed the Defendants did participate in the demolition of the Plaintiff's structure on the suit, then that was impunity and act of taking the law into their hands. Though the Defendants did not appear nor file defence, it was the duty of this Court to examine the available evidence and the law and then make a judicious decision. The court has indeed done that and has carefully considered the available evidence.

I have also considered the exhibits produced in court. The said evidence is not controverted and/or challenged. I will not hesitate to believe the Plaintiff's version of evidence. Consequently, the court finds that the Plaintiff has proved his case on a balance of probabilities.

Accordingly the court enters judgement against the Defendants jointly and severally as prayed in the Plaintiff in terms of Prayers **No.I, II, III, IV**, plus costs of the suit and interest therein.

In respect of Prayer no. II, any occupant on the suit property to move out of the suit property within the next **90 days** from the date of this judgement and in default, the Plaintiff/Applicant to apply for court for an eviction order.

It is so ordered.

Dated, signed and delivered in NAIROBI this 16th JUNE, 2017.

L. GACHERU

JUDGE

16/6/2017

In the presence of

Hon. Gacheru Judge

Court clerk: Hilda

Plaintiff – Absent though notified

Defendants – Absent

L. GACHERU

JUDGE

16/6/2017