



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS

ELC. PETITION NO. 193 OF 2012

BENEDICT NDOLO KILONZI.....PETITIONER

VERSUS

NYAMU KATUNGO.....1ST RESPONDENT

NZEI NYAMU.....2ND RESPONDENT

JUDGMENT

1. In the Petition dated 4th June, 2012, the Petitioner averred that he bought a parcel of land known as Kathivo/Kasarani/244 from the 1st Respondent; that he paid the entire purchase price and that he has since developed the suit land.
2. It is the Petitioner's case that in January, 2012, the 2nd Respondent, in cahoots with the 1st Respondent, trespassed on the suit land thus infringing on the Petitioner's right to own the suit land.
3. The Petitioner is praying for an order declaring him the lawful owner of the suit land and for an order directing the Registrar of Lands, Kitui County, to excise four (4) acres of land from the suit land and register the same in his name.
4. Although the Respondents were served with the Petition, they never filed Affidavits in response to the Petition.
5. The matter proceeded for hearing on 27th February, 2017 by way of *viva voce* evidence.
6. The Petitioner, PW1, informed the court that he bought a portion of the suit land measuring approximately four (4) acres from the 1st Defendant.
7. According to PW1, it is the Respondents who were initially using the land although he is now in occupation of the same.
8. PW1 produced in evidence the Sale Agreement dated 17th February, 2003 between himself and the 1st Respondent.
9. The Petitioner's advocate submitted that under the Constitution, a person has a right to acquire and own property anywhere in Kenya; that the Petitioner acquired the suit land legally and that having received the

full purchase price, the 1st Respondent is holding the suit land in trust for the Petitioner.

10. Counsel submitted that the Petitioner's interest is in respect of the four (4) acres that he purchased.

11. Counsel relied on the case of *L.N. vs. S.M.M (2013) eKLR and Gissing vs. Gissing (1971) AC 886* which I have considered.

12. It is not in dispute that the 1st Respondent is the registered proprietor of a parcel of land known as Kathivo/Kasarani/244.

13. It is also not in dispute that the Petitioner, vide an Agreement dated 17th February, 2003, purchased four (4) acres out of the suit property.

14. The Petitioner produced in evidence the Agreement of Sale dated 17th February, 2003.

15. According to the said Agreement, the Petitioner did pay the 1st Respondent Kshs. 150,000 out of the purchase price of Kshs. 160,000. The balance was to be paid after the transfer of the purchased land to the Petitioner.

16. Considering that the 1st Respondent has not denied that he sold to the Petitioner a portion of the suit land, I find and hold that the 1st Respondent is holding the said land in trust for the Petitioner.

17. For those reasons, I allow the Petitioner's Petition dated 4th June, 2012 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29TH DAY OF SEPTEMBER, 2017.

O. A. ANGOTE

JUDGE