



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ELC. CASE NO. 369 OF 2014**

**GLADWELL GATHONI MARAI.....APPLICANT /PLAINTIFF**

**VERSUS**

**STEPHEN WANJAU MWANGI .....RESPONDENT/ DEFENDANT**

**JUDGMENT**

This suit was commenced by way of a Plaint dated and filed on 26<sup>th</sup> March 2014 in which the Plaintiff sought for judgment to be entered against the Defendant as follows:

- a) A permanent injunction restraining the Defendant, his agents, servants and or employees from unlawfully and without any legal basis interfering with the Plaintiff's quiet possession of Plot No. 94 Dandora Jua Kali (hereinafter referred to as the "suit plot").
- b) Costs of this suit and interest thereon.

**The Pleadings**

In the Plaint, the Plaintiff stated that she is the owner of the suit plot which she bought from the Defendant. It was her statement that she paid part of the purchase price to him on 11<sup>th</sup> December 2012 and the balance was paid through rent from tenants who were occupying the suit plot. She further stated that the Defendant transferred the suit plot to her and she took possession thereof and remained therein until the year 2013, when the Defendant started to interfere with it. She stated that her efforts to stop the Defendant from interfering with her quiet possession of the suit plot have proved futile hence this suit.

The Defendant did not enter appearance or file a defence and pursuant to a Request for Judgment dated 24<sup>th</sup> August 2015 and filed on 2<sup>nd</sup> September 2015, interlocutory judgment was entered against the Defendant on 8<sup>th</sup> October 2015 and the matter proceeded to formal proof on 1<sup>st</sup> March 2016.

**The Evidence**

The Plaintiff is the only witness who testified. It was her evidence that she bought the suit plot from the Defendant in November 2012 at a purchase price of Kshs. 350,000/-. She produced a copy of the sale agreement they entered into. It was her testimony that she first paid the Defendant Kshs. 200,000/-, and then paid Kshs. 130,000/- to him in the presence of their advocate. She further indicated that the balance

of Kshs. 20,000/- was paid via water and electricity bills. It was her evidence that after settling the entire purchase price, she was given the necessary documents by the Defendant to transfer the suit plot to herself. She stated that she got a Plot Formalization Card from the then City Council of Nairobi, a copy of which she produced. It was her further evidence that after selling the suit plot to her, the Defendant moved out but later returned with other people who tried to take possession of the suit plot. She told the court that she is seeking a court order in order to evict those trespassers who are tenants of the Defendant and from whom the Defendant collects rent.

### **The Issues and Determination**

The main issue for determination in this suit is whether the Plaintiff is the owner of the suit plot and if so whether she is entitled to an order of permanent injunction restraining the Defendant from trespassing the suit plot. It is the Plaintiff's evidence that she bought the suit plot from the Defendant in the year 2012 at a purchase price of Kshs. 350,000/-. In support of that assertion, she produced a handwritten sale agreement between her and the Defendant. It was her further evidence that she paid Kshs. 330,000/- to the Defendant as part of the purchase price thereof and produced a duly signed Acknowledgment dated 11<sup>th</sup> December 2012 in which the Defendant acknowledged receipt of that amount. Further to the above, the Plaintiff produced a copy of the Plot Formalization Card issued to her by the now defunct Nairobi City Council as proof of her ownership of the suit plot. She also produced a receipt issued by the defunct Nairobi City Council evidencing her payment of the stand premium in respect of the suit plot. Overall and particularly in the absence of any challenge from the Defendant, this court is satisfied that the Plaintiff has proved that she is indeed the owner of the suit plot and she is entitled to exclusive use and possession thereof.

Accordingly, this court enters judgment against the Defendant as prayed in the Plaint with costs to the Plaintiff.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2017.**

**MARY M. GITUMBI**

**JUDGE**