



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 1108 OF 2013

JULIUS KIMANI KIBE.....PLAINTIFF

=VERSUS=

JOSEPH K. NJENGA alias

JOSEPH K. NG'ANG'A.....DEFENDANT

JUDGEMENT

INTRODUCTION

1. The Plaintiff brought this suit against the defendant seeking the following reliefs;-

- a) A declaration that plot No.1/171 belongs entirely to the plaintiff by virtue of allotment letter dated 20th September 1990.*
- b) An order of eviction of the defendant from the property known as plot No. 1/171.*
- c) A permanent injunction restraining the defendant, his servants, employees or anyone whosoever from trespassing, leasing, transferring or alienating in any way plot No. 1/171 within Soweto Resettlement Scheme without the consent of the Plaintiff.*
- d) Costs of this suit.*

2. The defendant who was duly served with summons to enter appearance did enter appearance but did not file defence. When the case came up for formal proof on 2.10.2017, Counsel for the defendant applied for adjournment on the grounds that he intended to file an application to cease acting for the defendant but the application was rejected. The defendant's counsel then went away and never took part in the hearing.

PLAINTIFF'S CASE

3. The Plaintiff testified that prior to allocation of the suit property, he was occupying land which was later taken up by the military at Embakasi . Those affected were allocated plots at Soweto Resettlement Scheme. He was allocated plot No. 1/171. He put up a temporary structure on the suit property where he kept his belongings. He later went to the suit property and found that all his belongings had been stolen.

4. In the year 2013, he went to the suit property on routine check and found that the defendant had put up temporary structures on the suit property. The defendant told him that the suit property had been sold to him by the defunct Nairobi City Council. The Plaintiff tried to sort out the ownership dispute through the local administration in vain.

ANALYSIS

5. I have gone through the documents produced by the plaintiff in support of his case. The plaintiff was allocated the suit property through letter dated 20th September 1990. The suit property was allocated to the plaintiff by the then Provincial Administration. The allocation was subsequently formalized by the County Government of Nairobi. When the dispute ownership arose, the surveyor of the Nairobi City County was engaged and established that the plot in dispute is plot No. 1/171. The defendant was claiming the same plot alleging that it is plot No. 1/171 A. The surveyors are the persons who know the position of plots as they are on the ground. The City County Surveyors have confirmed that the plot number on the ground is plot 1/171 which is the disputed area. There is no such plot as plot No. 1/171A.

CONCLUSION.

6. From the analysis of the documents presented by the Plaintiff and given the fact that the defendant did not file any defence. I find that the Plaintiff has proved his case on a balance of probabilities. I allow his claim in terms of prayers (a) (b) (c) and (d) of the Plaint filed in Court on 18th September 2013.

Dated, Signed and delivered at **Nairobi** on this **20th** day of **November 2017**.

E.O.OBAGA

JUDGE

In the presence of :-

M/s Njuguna for Plaintiff

Court Assistant: Hilda

E.O.OBAGA

JUDGE