



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 399 OF 2017

CLEMENT KINYANJUI GATHUA.....PLAINTIFF

VERSUS

THE CHIEF LAND REGISTRAR OF KENYA.....DEFENDANT

JUDGEMENT

By a *Plaint* dated **31st March 2017**, the Plaintiff herein *Clement Kinyanjui Gathua*, has sought for these orders:-

- a) *An order declaring that the suit land herein namely LR.No.Thika Municipality Block 1/23, also known as Plot No.SSS6/27 located and situated in Makongeni Estate in Thika legally belongs to the Plaintiff.*
- b) *An order directing the Defendant to register the suit property herein namely LR.No.Thika Municipality Block 1/23, also known as Plot No.SSS6/27, into the name of the Plaintiff and issue him with a Certificate of Lease for the same.*
- c) *Any other relief that this Honourable Court may deem fit to grant in the circumstances of this case.*
- d) *Costs of this suit.*

The Plaintiff has averred that he is the legal, legitimate and beneficial owner of the suit property herein **LR.No.Thika Municipality Block 1/23**, located at **Makongeni Estate**, having purchased the same from one **Ebrahim Ndegwa Kango** *alias* **Ndegwa Kangu** on **19th July 2000**, vide a **Sale Agreement** even dated. He also averred that the said **Ebrahim Ndegwa Kango** *alias* **Ndegwa Kangu**, had bought the suit land from **J. Kuria Mugecha** vide a **Sale Agreement** dated **18th May 1978**. He also alleged that after he purchased the suit property from **Ebrahim Ndegwa Kango**, the said vendor gave him the original sale agreement dated **18th May 1978**, between the said **Ndegwa Kangu** and **J. Kuria Mugecha**.

It was his contention that after the purchase he took up possession of the suit property and has been in possession todate and he even collects rent from the rental rooms thereon. He also contended that he has tried to register the transfer which was executed by **Ebrahim Ndegwa Kango** in his favour but the Lands office has insisted that he needs to avail the documents that belongs to the original owner, **J. Kuria Mugecha**, and the Plaintiff does not know his whereabouts. He further contended that he has made efforts to trace the whereabouts of **Ebrahim Ndegwa Kango** *alias* **Ndegwa Kangu**, who sold the property

to him to no avail. He cannot therefore obtain the requested documents. From the above stated hitch, he cannot therefore transfer the suit property into his name and he cannot trace both **Ebrahim Ndegwa Kango** and **J. Kuria Mugecha** the previous vendors herein.

The Plaintiff has therefore urged the Court to compel the Defendant as the custodian of documents of title to the suit property to transfer the same into the Plaintiff's name notwithstanding the absence of the original owner or the vendors and the documents requested by the Defendant herein. He urged the Court to allow the claim herein.

Though the Defendant was served with Summons to enter appearance as is evident from the affidavit of service of **Stanley K. Kimani** the **Process Server**, it did not enter appearance nor file Defence. The matter proceeded for formal proof on **18th July 2017**. The suit herein is therefore undefended and the Plaintiff's allegations uncontroverted.

The Plaintiff herein **Clement Kinyanjui Gathua**, gave evidence for himself and called no witness. He reiterated the averments contained in the Plaint and relied entirely on his witness statement dated **31st march 2017**, which was filed together with the Plaint. He also produced various documents to support his allegations. The documents produced were the ones listed in his bundle of documents and he produced them as Plaintiff's **exhibits no.1 – 11**. These documents include Letter of allotment of the suit land to **J. Kuria Mugecha** dated **26th May 1975**, and **Sale Agreement** between **J. Kuria Mugecha** and **Ndegwa Kangu** dated **18th May 1978** and the property in issue is **Plot No.SSS6/27** situated in **Thika Municipality**, which is the suit property. There was a further sale agreement dated **19th July 2000**, between the said **Ebrahim Ndegwa Kango alias Ndegwa Kangu** and the Plaintiff herein. The sale is for **Plot No.SSS6/27, Thika Municipality**. In the said sale agreement, it was acknowledged that the suit property is registered in the name of **J. Kuria Mugecha**. The Plaintiff also produced a Transfer of Lease signed by the said **Ebrahim Ndegwa Kango** in favour of the Plaintiff, but the said transfer is not registered.

Further the Plaintiff produced a Rent statement for **SSS6/27 Makongeni Estate** in his favour and the said rent is collected by **Cornerstone Real Estate Ltd**. The production of the said Rent statement shows that the Plaintiff is the one in control and use of the suit property.

After the close of the Plaintiff's evidence, the **Law Firm of C. M. Ngugi Rebero & Co, Advocates** for the Plaintiff filed written submissions and urged the Court to allow the Plaintiff's claim.

The Court has considered the available evidence and the exhibits produced in Court. There is no doubt that the suit property herein was initially allotted to **J. Kuria Mugecha** on **26th July 1975**, for a term of **50 years** from **1st July 1975**. It is also evident that the said **J. Kuria Mugecha** sold the suit land to **Ndegwa Kangu** as is evident from sale agreement dated **18th May 1978, exhibit no.2**. Further, it is evident that **Ndegwa Kangu** or **Ebrahiim Ndegwa Kango** sold the suit land to the Plaintiff herein. The said **Ndegwa Kangu** signed a transfer of lease but the suit property has not been transferred to the Plaintiff yet. He alleged that the Land Registrar has demanded for certain documents belonging to the original allottee, **J. Kuria Mugecha**. However, the Plaintiff has claimed that he cannot trace the said **J. Kuria Mugecha** or **Ndegwa Kangu**, so that he could obtain the said documents. If that is the case, then the Plaintiff would never be in a position to avail the said documents and that would hinder registration of the suit property in his name. It is evident that the Plaintiff is in possession of the suit property and has been collecting rent from the rental rooms constructed on the said property. There was no evidence from any quarter to the contrary.

For a proprietor to be legally considered as the owner of any property, the said property has to be registered in his favour and Certificate of registration issued to the proprietor. As provided by Section 26(1) of the Land Registration Act, conclusive evidence of proprietorship is through Certificate of lease or title. The duty to issue such Certificate of lease or title is upon the Land Registrar as provided by Section 30(1) of the Land Registration Act, which provides as follows:-

“The Registrar may, if requested by a proprietor of land or a lease where no certificate of title or certificate of lease has been issued, issue to him or her a certificate of title or a certificate of lease, as the case may be, in the prescribed form showing, if so required by the proprietor, all subsisting entries in the register affecting that land or lease”.

The Plaintiff has alleged that he cannot obtain registration of his property or the suit property because the Land Registrar has demanded for production of certain documents belonging to the original allottee of the suit property, **J. Kuria Mugecha** and whom the Plaintiff is not in a position to procure. He alleged that he does not know the whereabouts of the said **J. Kuria Mugecha** nor **Ndegwa Kangu**, who sold the suit property to him.

The Defendant did not file its defence nor participate in the proceedings. The Plaintiff’s evidence is therefore uncontroverted and this Court finds no reason to doubt the same.

Having now carefully considered the available evidence, the Court finds that it is evident that the Plaintiff did purchase the suit property from **Ebrahim Ndegwa Kangu**, whom he cannot trace at the moment. He needs to have the suit property registered in his name since he has been in possession, use and control since the **year 2000**. Failure to avail the sought documents by the Defendant is due to factors beyond his control. The Plaintiff has documents to show that the suit property was allotted to the original allottee **J. Kuria Mugecha**, who later sold the same to **Ebrahim Ndegwa Kango** and the said purchaser sold the suit land to the Plaintiff herein. The said **Ebrahim Ndegwa Kango**, had even signed the Transfer of Lease in favour of the Plaintiff herein. Therefore, ***the Plaintiff should be allowed to have the said property registered in his name. The Defendant should forthwith register the suit property in favour of the Plaintiff using the available documents.***

Consequently, the Court finds that the Plaintiff has proved his case on a balance of probability and therefore, this Court ***proceeds to enter Judgement in his favour as against the Defendant in terms of prayers no.(a) and (b) of the Plaint dated 31st May 2017.***

Further, on any other relief, if there are ***any documents requiring signing*** to facilitate such transfer, the ***Executive Officer of this Court*** is ***authorized by this Court to sign such transfer documents.*** Costs of this suit shall ***be in the cause.***

It is so ordered.

Dated, Signed and Delivered at Thika this **3rd** day of **November** 2017.

L. GACHERU

JUDGE

In the presence of

Mr. Kinyanjui holding brief for Mr. Ngugi for Plaintiff

No appearance for Defendant

Lucy - Court clerk.

L. GACHERU

JUDGE

3/11/2017