



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO. 136 OF 2010

MAINA KARIUKI.....PLAINTIFF

=VERSUS=

1. JOHN MAINA MBURU

2. THE HONOURABLE ATTORNEY GENERAL

3. COMMISSIONER OF LANDS.....DEFENDANTS

J U D G M E N T

1. In the Further Amended Plaintiff dated 5th August, 2014, the Plaintiff averred that at all material times, the Plaintiff was and is the owner of parcel of land known as Ruiru West Block 1/234; that on 2nd March, 2010, the 1st Defendant illegally caused his name to be gazetted for compensation as the beneficial owner of the suit property by the Government under the Land acquisition Act and that the 1st Defendant failed to inform the Commissioner of Lands that he was the true owner of the suit property.
2. The Plaintiff has averred in the Plaintiff that unless the Defendant's name is struck from the list of beneficiaries and replaced by his name, he shall suffer irreparable losses and damages.
3. In his Defence, the 1st Defendant averred that he is the rightful proprietor of parcel of land number Ruiru/Ruiru West Block 1/234.

The Plaintiff's case:

4. The Plaintiff, PW1, relied on the statement that he filed in this court together with the documents.
5. PW1 informed the court that on 27th March, 1997, he purchased parcel of land number Ruiru West Block 1/234 (the suit property) from Mr. Francis Ndungu Mwaura.
6. After purchasing the land, PW1 informed the court that he planted trees along the boundaries and cultivated it.
7. It was the evidence of PW1 that he was issued with a Certificate of Ownership of the land by the Githunguri Ranching Company Limited and thereafter applied for a Title Deed in February, 2004 through the same company.
8. According to PW1, the Government is in the process of compensating the genuine owners of plots within the locality where the suit property is situated. However, he discovered that the 1st Defendant, who is a former Chairman of the Githunguri Ranching Company Limited, caused his name to be gazetted as the genuine owner of the suit property.
9. In cross-examination, PW1 stated that he was issued with a Title Deed on 2nd February, 2004; that

he bought the land from Mr. Ndungu who was a member of Githunguri Ranching Company and that he is not aware if the 1st Defendant also has a lease over the same property.

10. The Plaintiff produced in evidence the Title Deed for Ruiru West Block 1/234 dated 2nd February, 2004, the Kenya Gazette Notice No. 2241 of 26th February, 2010 and the agreement of sale of Plot number 234 dated 22nd March, 1997.

The Defendant's case:

11. Other than the Defence that was filed by the 1st Defendant, the Defendants did not testify in this matter.

Submissions:

12. The Plaintiff's advocate submitted that the Plaintiff was the owner of the suit property until its compulsory acquisition came about; that on 2nd March, 2010, the 1st Defendant illegally caused his name to be gazetted for compensation as the owner of the suit property and that the Plaintiff has proved that he is the legal and rightful owner of the suit property.

13. According to the Plaintiff's counsel, the 3rd Defendant did not follow the requisite procedure while compulsorily acquiring the suit property and that it is the Plaintiff who is entitled for compensation of the suit property at the current market rate.

14. The Defendants' counsel did not file their submissions.

Analysis and findings:

15. It is not in dispute that vide gazette notice number 2241 dated 26th February, 2010. The Commissioner of Lands purported to acquire several portions of land pursuant to the provisions of Section 9(1) of the Land Acquisition Act (repealed) for the "Nairobi Northern By-Pass Project".

16. One of the parcels of land that the Commissioner of Lands purported to acquire is Ruiru/Ruiru West Block 234.

17. The gazette notice that was signed by the Commissioner of Lands indicated the registered owner of the land as John Maina Mburu, the 1st Defendant. According to the Plaintiff, the suit property is registered in his favor. PW1 informed the court that after purchasing the land, he was issued with a Title Deed on 2nd February, 2004. The said Title Deed was produced in evidence by PW1.

18. Although in his Defence the Defendant averred that he is the registered proprietor of the suit property, he never produced evidence to show that he is the owner of the land.

19. In the absence of evidence to show that the Plaintiff acquired the Title Deed for Ruiru West Block 1/234 fraudulently or by mistake, and considering that a Certificate of Title issued by the Registrar is supposed to be taken by the courts as prima facie evidence that the person named as the proprietor of the land is the absolute and indefeasible owner, I find and hold that the Plaintiff has proved his case on a balance of probabilities.

20. For those reasons, I allow the Further Amended Plaint dated 5th August, 2014 in the following terms:-

(a) A permanent injunction be and is hereby issued restraining the 1st Defendant, his agents, employees and or assigns from interfering with the Plaintiff's parcel of land known as Ruiru/West Block 1/234.

(b) A declaration be and is hereby issued that the Plaintiff is the registered owner of parcel of land known as Ruiru West Block 1/234.

(c) The Commissioner of Lands or his successor in office be and is hereby directed to cancel the 1st Defendant's name, JOHN MAINA MBURU, and substitute it with the Plaintiff's name, MAINA KARIUKI as the beneficial registered owner of parcel of land known as Ruiru West/Block 1/234.

(d) The Commissioner of Lands or his successor in office to compensate the Plaintiff for the acquired land known as Ruiru West Block 1/234.

(e) The 1st Defendant to pay to the Plaintiff the costs of the suit.

Dated, signed and delivered in Malindi this **18th** day of **May**, 2016.

O. A. Angote

Judge