



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 317 OF 2013

DOMINIC MUKUI KIMATTA.....PLAINTIFF

VERSUS

REGINA NGOIRI.....1ST DEFENDANT

ANN WANJIKU.....2ND DEFENDANT

NANCY NYAMBURA.....3RD DEFENDANT

JANE WANJIKU MUTHAMA.....4TH DEFENDANT

LUCY MUTHONI.....5TH DEFENDANT

JOYCE WAITHERA.....6TH DEFENDANT

RHODA AKINYI ODONDO.....7TH DEFENDANT

JAMES NGIGE.....8TH DEFENDANT

SAMSON KIPLANGAT NGETICH.....9TH DEFENDANT

JUDGMENT

(Suit by plaintiff for possession of land; plaintiff purchasing land but defendants interfering with the same; no defence filed by defendants; suit against 1st - 8th defendants withdrawn; 9th defendant not demonstrating any rights over the suit land; judgment entered for the plaintiff; 9th defendant permanently restrained from the suit land)

1. The plaintiff in this case commenced this suit on 17 May 2013, seeking orders inter alia that the defendants have no rights over the property Dundori/Muguathi Block 2/ 81 (Koelel) and for orders of mandatory injunction against them. The case of the plaintiff, is that he purchased the suit land from one Rael Kendagor for a consideration of Kshs. 4,800,000/= through a sale agreement executed on 11 September 2012. Upon payment, the plaintiff took up possession and ploughed the land in the month of March 2013. However, the defendants without the authority of the plaintiff, entered the land and each took up some portions of it. The plaintiff reported the matter to the Chief and it was discovered that the 9th defendant through the 8th defendant had leased the land to the 1st to 7th defendants. It is the view of

the plaintiff that the 8th and 9th defendants have no rights over the suit land. It is for that reason that he filed this suit against the defendants.

2. Despite being served, the defendants did not file any appearance nor any defence. However, on 17 March 2016 when this matter was due for hearing, the 9th defendant made appearance in court and sought to defend the suit. I gave him 14 days to file his documents but none was filed. On 13 March 2017 when the matter proceeded for hearing, none of the defendants availed themselves. The plaintiff however withdrew the case as against the 1st to 8th defendants as it was stated that they have since vacated the land.

3. In his evidence, the plaintiff produced as an exhibit the sale agreement between himself and Rael Kendagor. He testified that the land was formally transferred to him on 8 August 2014 and he was issued with a title deed, a copy of which he produced as an exhibit. When he purchased the land, the vendor informed him that the 9th defendant had laid a claim over it but this dispute had been decided in favour of the vendor. After the purchase, he planned to plant fodder for his animals, but when he went to the land, he found small portions planted with maize. He took up the matter with the chief and the 1st to 8th defendants came up with small chits showing that the 9th defendant had leased the land to them. The plaintiff accommodated them upto the time of harvest and they did not come back again. 4. He stated that the 9th defendant has however continued to plant maize on the land without his consent.

5. I have considered the matter. I have seen that the plaintiff is now the registered proprietor of the suit land after having purchased it from Rael Kendagor. The 9th defendant who has continued to trespass in the land has not tendered anything to demonstrate that he has any rights over this land. The only conclusion that I can reach is that his continued acts of trespass are unlawful and not backed up by any justifiable cause. As registered proprietor, the plaintiff is entitled to all rights of proprietorship including the right to control ingress and egress and the right to exclusive possession of the land. These rights are enshrined in Section 25 of the Land Registration Act, 2012, which provides as follows :-

Section 25. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

6. The defendant has not shown that he holds any identifiable right over the suit land. He has not demonstrated that he has any right to enter into the plaintiff's land and cultivate it. He cannot therefore defeat the rights of the plaintiff as proprietor and he must keep off the plaintiff's land.

7. I enter judgment for the plaintiff and make the following orders :-

(i) That it is hereby declared that the 9th defendant, Samson Kiplangat Ngetich, has no rights whatsoever over the land parcel Dundori/ Muguathi Block 2/81 which land is registered in the name of Dominic Mukui Kimatta, the plaintiff herein.

(ii) That a mandatory injunction is hereby issued directing the 9th defendant, Samson Kiplangat Ngetich and/or his servants/agents and assigns, to forthwith upon service of this judgment and/or decree, move out of the land parcel Dundori/Muguathi Block 2/81 and in default an order of eviction to issue.

(iii) That a permanent injunction is hereby issued restraining the 9th defendant, Samson Kiplangat Ngetich from entering, being upon, cultivating, utilizing, leasing, or in any other way dealing with the land parcel Dundori/Muguathi Block 2/81.

(iv) The plaintiff shall have the costs of this suit as against the 9th defendant, Samson Kiplangat Ngetich.

8. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 29th day of March 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

No appearance on the part of M/s Wachira Mbutia & Company Advocates for the plaintiff

No appearance on the part of the defendants

Court Assistant : Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU