



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**ENVIRONMENT AND LAND COURT CASE NO. 275 OF 2014**

**CHARLES ONSOMU NYAMBOKI ..... PLAINTIFF**

**VERSUS**

**SILAS OMAO MOSIGISI ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff filed the instant suit against the defendant vide a plaint dated 16<sup>th</sup> July 2014. The plaintiff claimed to be the registered owner of land parcel **LR Nos. Mwangori Settlement Scheme/509, 510, 511, 512, 516, 517, 631 and 724** (hereinafter referred to as **“the suit properties”**). The plaintiff claimed the defendant on or about 27<sup>th</sup> June 2014 without any lawful cause and/or colour of right unlawfully entered and trespassed on the suit properties and commenced cultivation of portions of the suit properties and prevented the plaintiff from fencing and/or utilizing the said suit properties.
2. The plaintiff by the plaint sought orders that:-
  1. **Declaration that the plaintiff is the lawful and bonafide registered owner of the suit properties;**
  2. **Permanent injunction against the defendant restraining him, his servants and agents from in any manner dealing with and/or interfering with the suit properties;**
  3. **General damages for trespass;**
  4. **Costs of the suit.**
3. Simultaneously with the plaint the plaintiff filed a Notice of Motion application and the court on 30<sup>th</sup> July 2014 granted an injunction against the defendant pending the hearing and determination of the application. The defendant did not file a response to the application and/or any defence to the suit resulting in an interlocutory judgment being entered against the defendant on 16<sup>th</sup> December 2014.
4. The suit was fixed for formal proof hearing on 19<sup>th</sup> October 2015 when the defendant who had been served with a hearing notice attended and stated that he had not been served with summons to enter appearance and requested that he be served so that he could peruse the pleadings. The court granted adjournment of the matter and granted leave of 14 days to the defendant to file his defence and any statements of witnesses and documents that he may wish to rely on at the hearing.
5. The suit was next fixed for hearing on 10<sup>th</sup> February 2016 when the defendant who had been served with a hearing notice attended. The defendant who had not filed any pleading on being questioned by the court stated that he has no issue with the plaintiff as he (the defendant) stopped using the plaintiff’s parcels of land after he received notification from the plaintiff that he should

- stop using the land. The defendant infact stated he did not object to the claim by the plaintiff.
6. As the defendant had not filed any documents either admitting or opposing the plaintiff's claim I allowed the plaintiff to proceed with the formal proof hearing. One Julius Omari Otuke who held a Power of Attorney donated by the plaintiff who was said to be resident in the United States of America (USA) testified on behalf of the plaintiff. The witness testified that the plaintiff purchased the 8 parcels of land **LR Nos. Mwangori Settlement Scheme/509, 510, 511, 512, 516, 517, 631 and 724** from the defendant through various agreements annexed to the bundle of documents filed by the plaintiff. The witness stated that titles were processed in favour of the plaintiff in regard to all the 8 parcels of land as per the copies of title annexed in the plaintiff's bundle of documents. The witness further testified that after the filing of the suit and issue of the injunction the defendant ceased to interfere with the plaintiff's parcels of land and the plaintiff now seeks a declaration that he is the rightful owner of the suit properties and a permanent injunction against the defendant.
  7. By his own statement, the defendant admitted when he attended court during the formal proof hearing that the plaintiff owns the subject properties and that though he, defendant, had been using the land with the permission of the plaintiff he ceased to use the properties, when he received notification from the plaintiff not to use the land.
  8. The evidence by the plaintiff is uncontroverted. There is no doubt the plaintiff is the registered owner of the suit properties as evidenced by the copies of title deeds produced in evidence via the plaintiff's bundle of documents. As the registered owner the plaintiff is in terms of section 24, 25 and 26 of the **Land Registration Act, 2012** conferred with absolute rights of ownership and is entitled to have exclusive use of the parcels of land. As per the available evidence the plaintiff purchased the parcels of land from the defendant and upon transfer and issue of the titles in favour of the plaintiff whatever interest the defendant may have had in the suit properties was extinguished and the plaintiff became the absolute owner and his title indefeasible such that his title could only be challenged under the provisions of Section 26 (1) of the **Land Registration Act** on grounds of fraud or misrepresentation and/or if it is shown the title was acquired illegally, unprocedurally or through a corrupt scheme to which the plaintiff was culpable. There is no challenge to the plaintiff's titles.
  9. On the basis of the evidence tendered on behalf of the plaintiff, I am satisfied the plaintiff has proved his claim on a balance of probability and I enter judgment in his favour in terms of prayers (i) and (ii) of the plaint. I am not persuaded any basis has been laid for any award of any general damages for trespass and will not award any.
  10. In the circumstances of this case, I make no award for costs and each party will bear their own costs of the suit.

**Judgment dated, signed and delivered at Kisii this 18<sup>th</sup> day of March, 2016.**

**J. M MUTUNGI**

**JUDGE**

**In the presence of:**

..... for the plaintiff

..... for the defendant

**J. M. MUTUNGI**

**JUDGE**