

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

ENVIRONMENT AND LAND COURT

CIVIL CASE NO.199 OF 2011

KASTURIAL PALIMAL AGGARWAL.....PLAINTIFF

VERSUS

CHRISTOPHER NDIRITU KINYUA.....DEFENDANT

J U D G M E N T

The plaintiff has come to this court by plaint dated **15/12/2011** claiming that he is the registered owner absolutely for L.R. No.Nanyuki/Marura/Block 8/1227(Nturukuma) since **20/12/2006**. It is the plaintiff's contention that he bought the suit property on 5/5/1982 from one M'Marete M'Bwiria who was a shareholder in Mariaga Farmers Co-operative Society as plot No.1227 and an agreement to that effect was duly executed. The plaintiff avers that he then pursued Mariaga Farmers Co-operative Society for registration of the suit property until 20.12.2006 when he was issued with a title deed. That sometimes in the month of November 2011, the plaintiff visited the suit property as a purpose of routine check up only to find that the defendant had trespassed on the suit property and erected semi-permanent structures without the knowledge and/or consent of the plaintiff.

He contends that the said defendant has no claim over the suit property and has trespassed thereon in blatant breach of the law and threatens to remain there unless evicted through an order of this court. His claim against the defendant is for an order of vacant possession on the suit property and further orders of permanent injunction restraining the defendant, his agents, servants and/or assignees from trespassing or interfering in any manner whatsoever with the plaintiff's L.R. No.Nanyuki/Marura/Block 8/1227(Nturukuma). Despite demands made and notice of intention to sue having been issued, the defendant has failed, refused and/or neglected to make good the plaintiff's claim.

He avers that there is no suit pending or previous proceeding between him and the defendant. The cause of action arose within the jurisdiction of this Honourable Court and prays for judgment against the defendant for an order to evict the defendant or his agents from the plaintiff's L.R. No.Nanyuki/Marura Block 8/1227 (Ntururuka) and damages for trespass and for a permanent injunction restraining the defendant, his agents, servants and/or assignees from trespassing, interfering or in any way dealing with the plaintiff's parcel of L.R. No. Nanyuki/Marura Block 8/1227.

The defendant was duly served with summons to enter appearance but failed to do so within the stipulated time or at all hence judgment was entered as prayed in the plaint. The matter proceeded for formal proof when Mr. Kasturial Palimal testified on oath that he knows Christopher Nderitu Kinyua who has trespassed on his land L.R. No.Nanyuki/Marura Block 8/1227. The plaintiff bought the land in 1983 from M'Marete M'mwiria and the said sale was evidenced in the agreement dated 5/5/1982. He has never sold the land to another person. He does not know how Christopher N. Kinyua entered his land. He asked him to leave by a demand letter dated 21/11/2011 but Christopher refused. He is still in the land. The plaintiff prays for eviction and mesne profits and costs.

I have considered the evidence of the plaintiff especially the agreement between M'Marete M'Mbwiria and Kasturial Palimal Aggarwal on the 20/12/2006 and finds that the plaintiff is the registered proprietor of the suit property hence by provision of Section 24 of the Land Registration Act, he is vested with absolute ownership of the said land together with all rights and privileges belonging or appurtenant thereto and therefore the suit herein must succeed.

This court finds the suit merited and therefore enters judgment for the plaintiff against the defendant for an order that the defendant or his agents be evicted from the plaintiff's L.R. No. Nanyuki/Marura Block 8/1227 (Ntururuka), and that a permanent injunction restraining the defendant, his agents, servants and/or assignees from trespassing, interfering or in any way dealing with the plaintiff's parcel of L.R. No. Nanyuki/Marura Block 8/1227 is hereby issued by the court. However the claim for general damages based on trespass which was pleaded but not proved by the plaintiff and damages for trespass is hereby dismissed Costs to the plaintiff. Orders accordingly.

Dated, signed and delivered on 29th day of October 2014.

A. OMBWAYO

JUDGE