



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 11 of 2011

MOHAMMED NAEEM.....PLAINTIFF/APPLICANT

-VERSUS-

PATRICK MUTUKU.....DEFENDANT/RESPONDENT

JUDGEMENT

This suit was commenced by a plaint dated 13th January 2011 and the Plaintiff sought the following reliefs as against the defendant.

- (a) A declaration that the Plaintiff is the registered, true, lawful and exclusive owner of L.R. No. 12715/593;
- (b) A permanent injunction restraining the Defendant by himself or through his officers, agents, servants and/or employees or any other person save for the plaintiff or his assignee from transferring, charging, alienating, tampering with, altering or otherwise adversely dealing with the Title to land L.R. No. 12715/593 in a manner prejudicial to the Plaintiffs title;
- (c) A permanent injunction restraining the Defendant by himself or though his officers, agents, servants and/or employees or any other person save for the Plaintiff or his assignee from entering or interrupting the plaintiff's quiet and exclusive possession of Title No. L.R. 12715/593;
- (d) Costs of this suit together with interest at such rates and for such period as the Honourable court may deem appropriate;
- (e) Any such other or further relief as this Honourable Court may deem appropriate to grant.

Simultaneously, with the plaint the plaintiff filed a Notice of Motion application under a certificate of urgency seeking a temporary injunction as against the defendant. In the first instance the court granted the injunction exparte pending the hearing of the application interpartes. The Notice of Motion came for hearing interpartes on 4th April 2011 after the defendant had been served by way of substituted service. The defendant did not attend court and/or file any response and the court accordingly issued the orders sought in the Notice of Motion dated 13th January 2011.

The Defendant did not subsequently appear or file any defence and the matter was fixed for formal proof hearing on 29th November 2012 when it did not proceed but the court directed that the formal proof do proceed before me on 6th December 2012 and service of hearing notice on the defendant who had duly been served with a hearing notice for 29th November 2012 but had not appeared was dispensed with.

On 6th December 2012 Mr. Njoroge Regeru appeared for the plaintiff and the plaintiff gave evidence in support of his claim.

The plaintiff testified before me and adopted his witness statement made on 23rd November 2012 as his evidence in chief and the statement together with all the annexures (bundle of documents) thereto were produced as evidence for the plaintiff in the suit. Briefly the plaintiff testified that he has been the registered proprietor and owner of the Title L.R. No. 12715/593 in Syokimau since the year 2000 and produced the original certificate of title that the court scrutinised and confirmed to totally correspond with the copy annexed to the bundle of documents at pages 1-4.

The Plaintiff testified that for all the period he has been registered as owner no person has claimed ownership of the plot save that in December 2010 some intruders entered his plot and attempted to fence part of it which the Plaintiff resisted and made a report to the police.

The official searches from the lands office including one made as recently as 21st November 2012 confirmed that the plaintiff was still the validly registered owner of the suit property.

The defendant, Patrick Mutuku stated to be the person who had authorised the fencing of part of my property and when he was contacted to attend a meeting with me at Embakasi police station to provide his evidence of ownership of the property he did not attend during the appointed date and only the Plaintiff attended at the Police Satation. The plaintiff testified that since December 2012 when he reporte4d the attempts by the Defendant and/or his agents to enter the suit property the defendant has not returned and the plaintiff remains in full possession of the suit property.

The Defendant did not enter a defence in the suit and the plaintiff sought judgment in terms of the plaint filed herein.

I have reviewed and considered the evidence tendered by the plaintiff in support of his claim and I am satisfied the plaintiff is the rightful owner of the title No. 12715/593 Syokimau by virtue of the transfer effected to him and registered against the title on 23rd November 2000 as endorsed on the grant number I.R 45490 as entry No. 3. The official search from the Land Office issued on 21st November 2012 confirms this to be the position. Prima facie the certificate of search confirms who the registered owner of the property is and in the absence of any evidence to the contrary the court finds that the plaintiff is the true and genuine owner of the suit property.

The court therefore holds that the plaintiff has proved that he is the owner of the suit premises and accordingly enters judgment in favour of the plaintiff in terms of prayers (a) (b) and (c) of the plaint.

The plaintiff is also awarded the costs of suit as against the Defendant.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2013.

J. M. MUTUNGI

JUDGE

In the presence of:

.....for the Plaintiff/Applicant

.....for the Defendant/Respondent