



**REPUBLIC OF KENYA**

**HIGH COURT AT NAIROBI (NAIROBI LAW COURTS)**

**ENVIRONMENTAL & LAND CASE 675 OF 2012**

**EDWARD WACHAGA MUTERO.....PLAINTIFF**

**VERSUS**

**SOLOMON MWANGI.....1<sup>ST</sup> DEFENDANT**

**DAVID OSORO.....2<sup>ND</sup> DEFENDANT**

**GILBERT OTIENO.....3<sup>RD</sup> DEFENDANT**

**JAMES MWANGI.....4<sup>TH</sup> DEFENDANT**

**MWANGI THENYA.....5<sup>TH</sup> DEFENDANT**

**MAINA DANIEL.....6<sup>TH</sup> DEFENDANT**

**JAMES KIBUCHA NDIRANGU.....7<sup>TH</sup> DEFENDANT**

**DANCAN WAVUA.....8<sup>TH</sup> DEFENDANT**

**EUNICE MWIKALI.....9<sup>TH</sup> DEFENDANT**

**JANE AKINYI ODERO.....10<sup>TH</sup> DEFENDANT**

**JUDGMENT OF THE COURT**

The Plaintiff filed suit through a plaint dated 5<sup>th</sup> October 2012 in which he sought the following reliefs:-

1. An order for eviction of the defendants from the plaintiff's parcel of land known as LR No. 209/9431 Grant No. IR 69919 (the "suit property.")
2. An order for the Officer Commanding Buruburu Police Station to provide security for purposes of ensuring compliance with prayer number one.
3. Any other relief that this Honourable Court may deem fit to grant.
4. Costs of this suit.

## **FACTS**

The facts of this case are that the plaintiff was and still is the registered proprietor of the suit property. He produced in evidence the original title document of the suit property which was indeed in his name.

He stated that in the year 2003, the defendants encroached and trespassed on the suit property and have continued to remain thereon with no colour of right whatsoever. He further stated that as a result of the Defendant's occupation of the suit property, the Plaintiff's proprietary rights and interests have been and continue to be adversely affected as the plaintiff cannot develop, sell, transfer, lease or in any other manner whatsoever deal with the suit property. He further stated that despite demand and notice of intention to institute proceedings against the defendants, the said defendants have refused, failed and/or neglected to make good the plaintiff's claim and vacate the suit property.

## **LAW**

Section 24(a) of the Land Registration Act provides as follows:-

**"Subject to this Act –**

**the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and priviledges belonging or appurtenant thereto."**

Section 26(1) of the Land Registration Act provides as follows:-

**"The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner ... and the title of that proprietor shall not be subject to challenge except:-**

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party or**
- (b) where the certificate of the title has been acquired illegally, unprocedurally or through a corrupt scheme."**

## **ANALYSIS**

To my mind, this is a relatively straightforward case in which the Plaintiff has established to the satisfaction of this court that he is indeed the registered proprietor of the suit property. Having established this fact, it follows that as the registered proprietor, the Plaintiff is by law entitled to all the rights and priviledges belonging to the suit property. These include the right to vacant and quiet possession, developing, selling, transferring, leasing and doing all the things he wants with the suit property.

Clearly, with the encroachment of the defendants on the suit property, the plaintiff has been wrongfully denied his rights of the suit property. There is no challenge on his title to the suit property that has been presented to this court. There is no evidence that has been adduced pointing to the plaintiff having acquired title to the suit property through fraud or misrepresentation or illegally, unprocedurally or through a corrupt scheme. Accordingly, the Plaintiff's claim of ownership of the suit property stands

unchallenged.

That being the case, this court is obligated to ensure that the Plaintiff have exclusive use and utilization of the suit property.

**CONCLUSION**

In light of the foregoing, this Court finds that the Plaintiff's rights of the suit property have indeed been infringed by the Defendants.

This Court finds in favour of the Plaintiff and enters Judgment as prayed in the plaint in favour of the Plaintiff.

**SIGNED AND DELIVERED AT NAIROBI ON THE 26<sup>TH</sup> DAY OF APRIL 2013**

**MARY M. GITUMBI**

**JUDGE**