



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI (NAIROBI LAW COURTS)
ENVIRONMENTAL & LAND CASE 307 OF 2011

OBADIAH MUTISYA KITONYIPLAINTIFF

VERSUS

JOHN MICHAEL 1ST DEFENDANT

ODONGO 2ND DEFENDANT

OCHIENG 3RD DEFENDANT

MEJA 4TH DEFENDANT

HADSON 5TH DEFENDANT

JUDGMENT OF THE COURT

This case was filed by a Plaint dated 23rd June 2011 in which the Plaintiff prays for the following orders:-

- a) An order of eviction to issue against the Defendants, their agents, servants and/or employees directing their removal from all that parcel of land known as Land Reference Number 209/12100 Kibera in the Nairobi Area (hereinafter referred to as the “Suit Property”);
- b) A permanent injunction do issue restraining the Defendants, their agents, servants and/or employees

from entering, trespassing, carrying out any activities, erecting any structures, dealing in any manner whatsoever and/or preventing, blocking and/or interfering with the Plaintiff's peaceful occupation and use of the Suit Property;

- c) General damages;
- d) Costs;
- e) Interest; and,
- f) Any other relief the Honourable Court may deem fit to award.

FACTS

The Plaintiff adduced evidence that on or about 21st October 1993, he was allotted the Suit Property by the Commissioner of Lands and that he proceeded to pay the stand premium, rent fees, conveyance fees, registration fees, stamp duty and survey fees in respect of the Suit Property on 23rd November 1993. In his evidence, the Plaintiff produced a copy of the said allotment letter. He then stated that on 2nd December 1994, the Commissioner of Lands issued him with the Certificate of Grant in respect of the Suit Property. A copy of the said title deed was produced to the court. He then informed the court that some mechanics started fixing their client's vehicles next to the Suit Property before they encroached into the Suit Property. He stated that upon noticing this encroachment, he issued a notice to the illegal occupants on 3rd January 1995 and copied to the provincial administration. This notice was not heeded. He stated that he then wrote to the District Officer Kibera seeking his assistance in evicting the illegal occupants of the Suit Property. He also stated that he gave another notice on 23rd May 1996 and that on 23rd August 1996 he sought the assistance of the Director of City Planning and Architecture at the City Council of Nairobi to remove the Defendants from the Suit Property but he was not successful. The Plaintiff then stated that he has had difficulties removing the Defendants from the Suit Property as the relevant authorities have not assisted him and that as a result the Defendants continue to enrich themselves at his expense. He then stated that he wishes to receive vacant possession of the Suit Property to enable him to develop it for profit.

The Defendants entered appearance through their Counsel but did not file a defence.

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 privileges belonging or appurtenant thereto.”

Section 26 (1) of the Land Registration Act states 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 title has been acquired illegally, unprocedurally or through a corrupt scheme.”**

ANALYSIS

This is a relatively straightforward case in which the Plaintiff has demonstrated to the court that he is indeed the registered proprietor of the Suit Property. As cited above, that registration gives him exclusive ownership rights of use and enjoyment of the Suit Property to the exclusion of all other persons. The production by the Plaintiff of his Certificate of Title has been taken by this court as prima facie evidence of the fact that he is the proprietor of the Suit Property. This goes to show that the invasion of the Suit Property by the Defendants is clearly illegal and should not be entertained whatsoever.

CONCLUSION

In light of the foregoing, with the exception of the prayer for general damages, this court enters judgment in favour of the Plaintiff as prayed in the Plaint.

SIGNED AND DELIVERED AT NAIROBI ON THE 26TH DAY OF APRIL 2013

MARY M. GITUMBI

JUDGE