



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

E.L.C 280 OF 2012

GACHUNGA GITHAGUI.....PLAINTIFF

VERSUS

MARY GATHIRI1ST DEFENDANT

KARURI GATHIRI..... 2ND DEFENDANT

NJENGA GATHIRI.....3RD DEFENDANT

JUDGEMENT

The plaintiff Gachunga Githagui filed a plaint against the defendants, Mary Gathiri, Karuri Gathiri and Njenga Gathiri. The plaintiff is seeking the following orders:

1. A permanent injunction restraining the defendants, their employees, servants or agents from entering, occupying, working, disposing, alienating, or in any other manner interfering with the plaintiff's quiet use and occupation of land parcel number Nyandarua/Tuluga/441 (here after referred to as the suit land)
2. That the Defendants jointly and severally be declared to be trespassers to the suit land and be ordered to deliver vacant possession and or in default be forcibly evicted.
3. That the OCS Kinangop police station be ordered to enforce the orders given.
4. The Defendants be condemned to pay costs of the suit.

Simultaneously with the plaint the applicant (plaintiff) brought a notice of motion of even date seeking among other orders, a temporary injunction to restrain the Defendants, their employees, servants or agents from entering, occupying, working, disposing, alienating, or in any other manner interfering with the plaintiff's quiet use and occupation of the suit land.

On 30th May, 2012 this court certified the plaintiff's application as urgent and granted a temporary injunction to restrain the defendants their employees, servants or agents from entering, occupying, working, disposing, alienating, or in any other manner interfering with the plaintiff quiet use and occupation of the suit land. This injunction was confirmed on 19th July 2012 after establishing that the Defendants were duly served.

On 27th July, 2011 judgment was entered against the Defendants after they failed to enter appearance and the matter set down for formal proof.

On 19th March 2013 when the matter came up for hearing, the plaintiff gave oral evidence and produced the following documents among others:

1. An original title deed in his name issued on 4th October 2012.
2. An original official search dated 4/10/2012.
3. A Misc. Application filed in Naivasha Principle Magistrate's court seeking the removal of the restriction placed on the suit land.
4. An order dated 9th May 2012 removing the caution.
5. A demand letter from Njihia Njoroge & Company advocates dated 10th May 2012 asking defendants to vacate the suit land.

During the hearing of the case, the plaintiff testified and called one witness. The plaintiff (PW1) testified that he was the registered owner of the suit land but had been residing in Nairobi while his son, Mungai took charge of the suit property. His son had leased out the property to the defendants to cultivate but passed on in 2008 while the defendants were still on the suit land. After the death of his son, the plaintiff asked the defendants to vacate the suit land but they refused. He later found out that one of them, Mary Gathiri Gachunga had placed a caution on the suit land leaving him with no choice but to file an application in Naivasha to apply for removal of the caution. An order to remove the caution was granted on 9th May 2012: That the plaintiff then filed this suit seeking the court's intervention to stop the defendants from further trespass and in default order for their eviction from the suit land.

Pw2 Winnie Gachunga testified that she was a daughter of the plaintiff and lived with him at Engineer in South Kinangop in a rented house where she took care of him as he was sick and Elderly. She reiterated that her elder brother Erastus Gichagui Gachunga had leased the suit land to the defendants but when he died and her father demanded they vacate the suit land the defendants refused and placed a caution on the suit land which was later removed by court.

The plaintiff claims that he is the registered owner of the suit property. He has produced a title deed and a certificate of official search to support this position. This is uncontroverted as the Defendants did not enter appearance.

I have considered the pleadings filed and the evidence adduced by the plaintiff in support of his case. The rights of the plaintiff in the instant case are protected under sections 27 and 28 of the Registered land Act(now repealed) Cap 300 which state as follows:

section 27(a):

" 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....."

28. The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject -

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register"

After considering both the oral and documentary evidence adduced herein and applying the law I am satisfied that the plaintiff has proved his case to the required standard. In the premises judgment is hereby entered in favour of the plaintiff as follows:

1. A permanent injunction restraining the defendants, their employees, servants or agents from entering, occupying, working, disposing, alienating, or in any other manner interfering with the plaintiff quit use and occupation of land parcel number Nyandarua/Tuluga/441 is issued
2. The Defendants do vacate forthwith the suit land within 30 days failure of which the Defendants be evicted.
3. That the OCS Kinangop police station is ordered to enforce the orders.
4. I will not grant any costs since the defendants did not enter appearance.

Dated, signed and delivered in open court at Nakuru this 12th day of July 2013.

L N WAITHAKA

JUDGE

PRESENT

Mr Ngure holding brief for Mr Njihia for Plaintiff

N/A for Defendants

Stephen Mwangi : Court Clerk.