



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

ENVIRONMENT & LAND COURT

CIVIL CASE NO.85 OF 2003

JENIFFER NJERI GACHANJI)

SAMUEL WANJOHI GACHANJI)

CHARLES MUREITHI GACHANJI).....PLAINTIFFS

VERSUS

PURITY WAMWIRUA GACHANJI)

PETERSON MURIU GACHANJI)

ALFRED MWANIKI GACHANJI).....DEFENDANTS

J U D G M E N T

The plaintiffs through Wahome Gikonyo and Company advocates filed a claim for an order of eviction of the defendants, their families and properties from **L.R. NO.MWERUA/KAGIOINI/794, L.R. NO.MWERUA/**

KANYOKORA/1121 and **L.R. No.MWERUA/KANYOKORA/1123** and damages for trespass. The plaintiffs have also prayed for costs of the suit and interest.

All plaintiffs and defendants are farmers resident and working for gain in Kirinyaga District. The plaintiffs are absolute proprietors of **L.R. NO.MWERUA/KAGIOINI/794, L.R. NO.MWERUA/KANYOKORA/1121** and **L.R. NO.MWERUA/KANYOKORA/1123** respectively under the provision of Registered Land Act cap 300 Laws of Kenya (repealed). The plaintiffs allege that the defendants without any color of right unlawfully and wrongfully entered the said parcels of land and refused to vacate. The plaintiffs contend that the defendants' action constitutes trespass into private property and also constitutes wanton violation of their property rights.

The plaintiffs served the defendants with summons to enter appearance, however, the defendants neither entered appearance nor filed defence and therefore interlocutory judgment was entered on 27/10/2003 against the defendants after the lapse of the stipulated time.

The matter was listed for formal proof for about 13 times and unfortunately never proceeded, however on 25/9/2013 the matter proceeded for formal proof .The first plaintiff Jeniffer Njeri Gachanji testified and stated that she comes from Kirinyaga, Mukure village.

She is a farmer by profession. The 2nd and 3rd plaintiffs are her sons.

She sued the defendants for an order of eviction from the parcels of land namely **MWERUA/KAGIOINI/794** which is registered in her name. Moreover she prays for eviction of the defendants from the parcels of land owned by the 2nd and 3rd defendants namely **MWERUA/KANYOKORA/1121** and **MWERUA/KANYOKORA/1123**. She produced the titles of the three parcels of land as PEXHIBITS 1, 2 & 3 respectively.

She further testified that the defendants had refused to vacate the parcels of land even after written requests. She produced demand letter as P-exhibits 4, 5 and 6 dated 16/9/2003. She further testified that the plaintiffs have their own parcels of land.

She states that she would have planted tea and coffee on the land that measures 3 acres. Samuel's (the 2nd plaintiff) land is two acres whilst Charles the 3rd plaintiff's land is 2 acres. Both would have grown tea and coffee. In her portion of land she claims that she could have earned Kshs.100,000/= in one year while in Kanyokora the sons could have earned Kshs.100,000/= per year from tea and coffee.

The plaintiff produced a certified copy of the Register of Mwerua/Kagioini/794, 1121 and 1123 the demand letters dated 16/9/2003 to the first defendant, 2nd defendant and 3rd defendant. The plaintiffs also produced title deeds in respect of their parcels of land.

The applicable law is the Land Registration Act 2012 No.3 of 2012. Section 24 confirms interest upon registration. The gist of the section is that registration of a person as proprietor of land shall vest in him the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.

Section 25 of the said Act provides for the rights of a proprietor whether acquired on first registration or subsequently for valuable consideration or by an order of court shall not be liable to be defeated except as provided by the Act and shall be held by the proprietor together with all privileges and appurtenances belonging thereto, free from all other interest and claims whatsoever but subject to leases, charges and other encumbrances and to the condition and restrictions if any, shown in the register. The rights are also subject to such liabilities, rights and interests as affect the same and are declared by section 28 not to require nothing on the register unless the contrary is expressed in the register.

The defendants were served but never appeared and never filed defence and therefore the court is left only with the evidence of the plaintiffs to determine this case.

The plaintiffs have established that they are the registered proprietors of the parcels of land and therefore have have rights as proprietors in the parcels of land.

The defendants have failed to establish that they have rights to the parcels of land. Moreover they have failed to established that the plaintiffs title can be challenged under the law. Furthermore the defendants have failed to prove that they have an overriding interest under the the law.

This court therefore finds that the plaintiffs have proved their case on a balance of probabilities and do grant prayers a, b and c of the suit.

On damages, the plaint as drawn does not request specifically for general or special damages. This court finds that the plaintiffs have neither pleaded nor proved special damages and therefore the same cannot be granted. Moreover the plaintiffs have not established a claim for general damages but are entitled for mesne profits for the time the defendants have occupied the parcels of land illegally. I do find that the plaintiffs are entitled to 12% of the value of of land per year for the period of occupation by the defendants.

I do direct that the land be valued and the plaintiffs to be paid each 12% of the value of their parcels of land for the period the defendants have occupied the land until they vacate. Orders accordingly.

Dated and Delivered at Nyeri this 11th day of October 2013

A. OMBWAYO

JUDGE