



REPUBLIC OF KENYA



KENYA LAW
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**Igainya Limited v Kimathi & 22 others (Environment and Land Case Civil
Suit 316 of 2017) [2022] KEELC 3799 (KLR) (12 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3799 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE CIVIL SUIT 316 OF 2017**

A NYUKURI, J

MAY 12, 2022

BETWEEN

IGAINYA LIMITED PLAINTIFF

AND

FRANCIS KIMATHI 1ST DEFENDANT

PETER MWITHINI 2ND DEFENDANT

FRANCIS KAHOME 3RD DEFENDANT

ENOCK MWASI KYURE 4TH DEFENDANT

JONATHAN NZUKI 5TH DEFENDANT

JOHN KYALO KITHEKA 6TH DEFENDANT

GILBERT ARERI 7TH DEFENDANT

ALBANUS KASYOKI 8TH DEFENDANT

MICHAEL MUSYOKI 9TH DEFENDANT

MUSYOKA NGUMI 10TH DEFENDANT

SIMON MUTUNE 11TH DEFENDANT

ANTHONY KITHOME 12TH DEFENDANT

THOMAS MUSILA 13TH DEFENDANT

STEPHEN MUTETI 14TH DEFENDANT

ABEDNEGO MUENDO 15TH DEFENDANT

EZEKIEL MWATHE 16TH DEFENDANT

SIMON MUSAU MAKAU 17TH DEFENDANT



JEREMIAH MUTUNGA	18TH DEFENDANT
BERNARD MUSYOKA	19TH DEFENDANT
CHARLES MUNUVE	20TH DEFENDANT
DANIEL MWISI	21ST DEFENDANT
PIUS MUSEMBI	22ND DEFENDANT
BENEDICT MUIMI	23RD DEFENDANT

JUDGMENT

1. On July 18, 2017, Igainya Limited filed a plaint dated the even date, which they amended on August 21, 2017 and filed on August 24, 2017 as against 23 defendants. In the amended Plaint, they stated that they were at all material times the registered owner of all that land known as L R no 7815/8 situated in Athi River within Machakos County (suit property) and that on July 9, 2019, the defendants unlawfully entered the suit property, demolished the fence thereon and attempted to subdivide the same. The plaintiff sought the following prayers;
 - a. A permanent injunction restraining the defendants jointly and severally by themselves, their joint or respective servants or agents from entering, remaining or in any other manner whatsoever from interfering with the plaintiff's piece of land L R no 7815/8.
 - b. Cost of the suit.
 - c. Interest on (b) above.
 - d. Any further relief that this honourable court may deem fit to grant.
 - e. General damages.
2. No defence was filed in response to the plaintiff's suit.
3. On December 7, 2021, counsel for the plaintiff made an oral application to withdraw the suit as against the 1st to the 21st defendants, which application was allowed. This left the suit only as against the 22nd and 23rd defendants. The matter came up for hearing on February 28, 2022, and although counsel for the 22nd and 23rd defendants had been served, they failed to attend court. Therefore, the case proceeded exparte.

Plaintiff's case

4. PW1, Engineer Isaac Gathungu Wanjohi, who is a director of the plaintiff was the sole witness at the hearing. He adopted his witness statement dated July 18, 2017 as his evidence in chief. He testified that the plaintiff acquired the suit property in the year 2002 and had been in possession until July 9, 2017 when the defendants together with about 50 of their agents, without any right or justification entered on the suit property, destroyed the fence and begun subdivision of the same. He further stated that the defendants had already started digging trenches and bringing in building materials with intention of building permanent structures on the suit property.
5. It was further his testimony that he reported the defendants to the police on July 9, 2017 which led to their arrest. He prayed that the defendants be restrained from trespassing and interfering with the suit property. He produced documents attached to the list of documents dated July 18, 2017. He produced



copy of the title deed for LR no 7815/8 as P-Exhibit 1, and photographs as P-Exhibit 2. That marked the close of the plaintiff's case. Counsel for the plaintiff then sought for a judgment date.

Analysis and determination

6. I have considered the pleadings and the plaintiff's testimony. What appears to this court as the main issues for determination are;
 - a. Whether the suit property belongs to the plaintiff.
 - b. Whether the plaintiff is entitled to the orders sought in the amended plaint.
7. Sections 24, 25 and 26 of the Land Registration Act No 3 of 2012 protects the rights of a registered proprietor of land and provides as follows;

Section 24 provides that; -

- a. The registration of a person as proprietor of land shall vest in that person the absolute ownership of that land together with all rights- and privileges belonging or appurtenant thereto; and
- b. The registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

Section 25 provides that;-

1. 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 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. To such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

Section 26(1) provides that; -

The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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.



8. It is therefore clear that the *Land Registration Act* protects the rights of a title holder whether it is a leasehold or freehold, thereby conferring absolute ownership of the land and protecting them from other interests and claims.
9. I have looked at the title produced by the plaintiff and it is evident that they were registered as proprietor of the suit property on December 19, 2002. The plaintiff stated that the defendants had placed building materials on the suit property with intention to construct thereon. The photographs produced by the plaintiff show that sand and stones had been placed on the suit property. The 22nd and 23rd defendants neither filed defence nor testified to justify their trespass on the suit property. Therefore, the plaintiff's evidence has not been challenged.
10. In the premises I find and hold that the plaintiff has proved their claim on a balance of probability that they are the owners of the suit property and therefore entitled to the protection of the law.
11. The plaintiff sought for a permanent injunction to restrain the Defendants from, among other matters, interfering with the suit property. They also sought for general damages. In my considered view, as the plaintiff has demonstrated ownership of the suit property, and the defendants have not shown the basis for their trespass, the plaintiff is entitled to orders of injunction to restrain the defendants from interfering with the plaintiff's quiet possession and enjoyment of the suit land.
12. The plaintiff has sought for general damages. They have not stated the basis for the damages and neither did they lead evidence to prove such damages. My view is that damages need not just be pleaded, they must also be proved. A party cannot just throw a claim at the court without proof and expect that the same to be granted. They must justify their claim. Looking at the plaintiff's evidence I do not see anywhere where damages were proved. In the premises, the claim for general damages must fail.
13. In conclusion, I find the plaintiff has proved their case on a balance of probability and I enter judgment for the plaintiff against the 22nd and 23rd defendants for the following orders;
 - a. A permanent injunction be and is hereby granted restraining the 22nd and 23rd defendants jointly and severally by themselves and or their joint or respective servants or agents from entering, remaining or in any other manner whatsoever from interfering with the Plaintiff's land parcel L R no 7815/8.
 - b. Costs of the suit shall be born by the 22nd and 23rd defendants.
14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 12TH DAY OF MAY 2022

A NYUKURI

JUDGE

In the presence of;

No appearance for the plaintiff

No appearance for the defendants

Mr Kevin Kimari – Court assistant

