



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

Civil Case 94 of 2011

FRANCIS KIMANI KARANJA.....PLAINTIFF

Versus

STEPHEN NJARAMBA NGUNJIRI.....DEFENDANT

JUDGMENT

By a plaint dated 22nd July 2011 the plaintiff sued the Defendant herein for an order of eviction of the defendant his family and properties from L.R. AGUTHI/ITHEKAHUNO/999 and damages for trespass together with cost of the suit.

It was pleaded by the plaintiff that he is the absolute registered proprietor of L.R. AGUTHI/ITHEKAHUNO/999 under the provisions of the Registered Land Act Cap 300 Laws of Kenya and that the defendant without any colour of right unlawfully and wrongly entered the said parcel of land and has refused to vacate the same which action constitutes trespass unto private land and wanton and gross violation of the plaintiffs property rights.

The defendant was served with summons to enter appearance but did not enter appearance within the stipulated period of time. Interlocutory judgment was therefore entered against the defendant in default of appearance.

This matter appeared before me on 17th January 2012 when the defendant requested for two weeks to enable the same instruct an advocate and therefore the court adjourned the matter to 8th March 2012 for hearing.

On 8th March 2012 the matter was listed before me for formal proof and the defendant once again applied for adjournment on the basis that he needed time to bring another court file allegedly in respect of the same subject matter. The application was opposed by Mr. Wahome for the plaintiff on the ground that there was no other file pending the same having been dismissed by the lower court on 22nd February 2012 and certificate of cost issued for Ksh. 65,180/= . Having taken into account the defendant's past conduct and also noting that the matter was fixed for formal proof interlocutory judgment having been issued against the defendant who despite having been given opportunity to take appropriate action to set aside the said interlocutory judgment did not do so, I dismissed the application and ordered that the matter do proceed for hearing.

P.W.1 FRANCIS KARANJA the plaintiff herein testified that he is a business man in Nyeri and that he is the owner of Land Number Kahuno/999 in support of thereof produced an official search certificate

issued on 15th June 2011 and that he bought the said land from the defendant at an agreed consideration of Ksh. 650,000/- as evidenced by a sale agreement dated 1st September 2005 and that he compensated the defendant for the development of the said land at a sum of Ksh. 106,101/- receipt of which the defendant acknowledged on 28th April 2010 exhibited as exhibit No. 4(a) that the defendant finally attended the Land Control Board together with his wife and children on 2nd December 2010 which board gave the consent to the transaction and the letter of consent was produced as exhibit No. 8.

The defendant finally signed transfer forms on 11th December 2010 when he had received the balance of the payment and affixed his photos to the said transfer and on 24th May 2011 the local chief requested that the defendant leave the land but the same refused to do so leading to the case before the court. The plaintiff was finally issued with a title deed on 27th April 2011. That to buy the present land the plaintiff sold his plot in Nyeri Skuta area and the defendant with the proceed of the sale bought a parcel of land at Ngobit Subuko Block 4/950.

The plaintiff testified that if the defendant had moved out he would have planted food crops thereat and would have made not less than 20,000/- per year and has therefore urged the court to award him the same in damages.

The defendant chose not to cross examine the plaintiff and or to tender in any evidence in opposition but submitted that what the plaintiff has said before the court were all lies and that he did not participate in the land Board neither did he sign transfer.

From the evidence tendered before the court I have identified the following issues.

i. Is the plaintiff the registered owner of the suit property?

ii. Is the defendant in actual occupation of the said land?

iii. Does the defendant have a right of occupation?

iv. Has the plaintiff made out a case for the grant of prayers sought?

In answer to issue number one, it is clear from the evidence and the document tendered that the defendant was the original owner of the suit property. The defendant subsequently sold the same to the plaintiff and transfer thereof effected and title deed issued in favour of the plaintiff. There is no issue of fraud alleged against the transaction herein and I therefore find that the plaintiff is the registered proprietor of the suit property.

It is also clear from the evidence tendered that upon completion of the sale herein the defendant for whatever reason refused and or neglected to grant vacant possession and continues to stay on the said property without any colour of right. This therefore answers issue number 2 and 3 above. It is clear that the plaintiff has made a case on a balance of probability for the grant of an order of eviction against the defendant, his family and properties from L.R. AGUTHI/ITHEKAHUNO/999.

The only issue now remaining is that of damages for trespass. It is not in dispute that the defendant has remained in occupation since the transfer was effected in favour of the plaintiff on 27th April 2011 when the title deed was issued in his favour. The plaintiff has alleged that he would have made Ksh. 20,000/- per year had the defendant given him vacant possession from the use of the said plot. However it is noted that the plaintiff has not provided any material before the court in support of the said claim. The court is therefore left to speculate on how much the plaintiff is entitled to in damages for the trespass herein. I have also noted that though the sale agreement was entered into on 1st September 2005 it was only on 2nd December 2010 when the parties herein attended the Land Control Board. The question which needs to be answered was as to whether the sale herein was lawful the agreement having been entered into before obtaining the consent of the local land board as is required in law? To my mind the

defect therein was only cleared on 2nd December 2010 when the consent of the board was granted and the defendant unlawful occupation can only be said to have started running as at 27th April 2011 when the title deed was issued in favour of the plaintiff. I therefore award the same Ksh. 20,000/- in general damages for trespass.

I therefore find in favour of the plaintiff as follows:

- a. An order be and is hereby issued for eviction of the defendant his family and properties from L.R. AGUTHI/ITHEKAHUNO/999.***
- b. The Defendant do pay to the plaintiff a sum of Ksh. 20,000/- being general damages for trespass.***
- c. Cost of this suit be paid by the defendant.***

Dated and delivered at Nyeri this 25th day of July 2012.

**J. WAKIAGA
JUDGE**

Delivered in open court this 25th day of July 2012.

No appearance by Wahome advocate

No appearance by the defendant

The plaintiff is present in person.

**J. WAKIAGA
JUDGE**