



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI(MILIMANI COMMERCIAL COURTS)

Environmental & Land Case 484 of 2009

CHRISTOPHER M. MUKIRAI1ST
PLAINTIFF

JANE CHEPKOECH2ND
PLAINTIFF

PAULINE KIROMBO.....3RD
PLAINTIFF

EVANS MWAMUNGA MAZOI.....4TH
PLAINTIFF

GRACE MWAHAKI.....5TH
PLAINTIFF

VERSUS

MICHAEL OMONDI.....1ST
DEFENDANT

PETER MWANGI.....2ND
DEFENDANT

SARA WAIRIMU.....3RD
DEFENDANT

BONIFACE GITHINJI.....4TH
DEFENDANT

PASTA JUDAH.....5TH
DEFENDANT

AMAKARU ABOYE.....6TH
DEFENDANT

JUDGMENT OF THE COURT

The Plaintiffs filed suit by way of a Plaint dated 28th September 2009 and filed on the same date, wherein they are seeking the following orders:

1. A declaration that Land L. R. No. 209/9451 and Plan Number 234882 legally and lawfully belongs to the Plaintiffs.
2. An order to be issued against the Defendants, their agents, servants or anyone else purporting to occupy the said land on authority from the Defendants that they vacate forthwith from the said property.
3. Costs of this suit together with interest thereon.
4. Any other or such further relief that this Honourable court may deem fit to grant in favour of the plaintiffs against the defendants.

The Plaintiffs' claim is that at all material times they were the registered owners of Land Reference Number 209/9451, having acquiring a title in respect of the land on 10th August 2001. Further, that in 2007 the Defendants invaded the Plaintiffs' land, erected illegal structures thereon, and are now committing waste and destruction on the said property. The Plaintiffs allege that despite several demand letters and notices to vacate, the Defendants have refused/ignored to vacate from the land.

The Defendants entered appearance on 28th January 2010 and have a Defence dated the same date and filed on 9th March 2010. The Defendants denied the Plaintiffs' averments and stated in the said Defence that they would prove their right of ownership at the hearing of the suit. Having satisfied myself that the hearing notice was duly served on the Defendants, I proceeded to hear the Plaintiffs case in the absence of the Defendants on 21st May 2012. An affidavit of service sworn on 27th March 2012 by Samson Ndegwa Thuku, a process server of this Court, and filed on 17th May, 2012 attests to the service of the said hearing notice.

The Plaintiffs' only witness (PW1) was Christopher Mabea Mukirai, the 1st Plaintiff. PW1 testified that the other Plaintiffs are his partners with respect to a plot known as LR No. 209/9451 situated along Kangundo road in Nairobi which they purchased and registered in their names. PW1 testified that they were first were issued with an allotment letter and then with a title deed with respect to the said plot in on 28th December 2001. He produced the original title deed in court and a copy of the same as exhibit 1.

PW1 further testified that when the Plaintiffs acquired the said plot it was vacant, and some squatters then invaded the land in 2007. The Plaintiffs thereupon reported the matter to the Provincial Administration who issued notices to vacate. However, after being served with the said notices to vacate a few of the squatters remained on the plot namely the Defendants who have put up *mabati* (iron sheet) structures and semi-permanent structures on the said plot. The Plaintiffs stated that they wanted the Court to grant them eviction orders, and after the close of their case, their Advocate asked for a judgment date, stating that he did not wish to make any submissions.

I have carefully read and considered the Plaintiffs' pleadings and evidence, and have perused the title deed produced in evidence by the Plaintiffs. I note that the said title deed was issued to the Plaintiffs on 10th August 2001 with respect to the land parcel known as LR No. 209/9451, and registered on 28th December 2001. I therefore find that the Plaintiffs have been able to prove on a balance of probabilities that they are the registered owners of the said land. In addition since the Defendants have not controverted the Plaintiffs' evidence, this Court enters judgment for the Plaintiffs as follows:

1. That the Plaintiffs herein namely Christopher M. Mukirai, Jane Chepkoech, Pauline Kirombo, Evans Mwamunga Mazoi and Grace Mwahaki, are hereby declared the owners and entitled to possession of the parcel of land known as Land Reference Number 209/9451.

2. That the Defendants herein namely Michael Omondi, Peter Mwangi, Sara Wairimu, Boniface Githinji, Pasta Judah, and Amakaru Aboye, are hereby ordered to vacate the parcel of registered as Land Reference Number 209/9451 within 60 days of date of service by the Plaintiffs of these orders, failing which the execution of decree against them shall proceed.

3. The Plaintiffs are awarded the costs of this suit.

Dated, signed and delivered in open court at Nairobi this ____23rd____ day of ____July____, 2012.

P. NYAMWEYA
JUDGE