



MISHECK MWILARIA.....PLAINTIFF

VERSUS

STANELY M'NGIYUDEFENDANT

J U D G M E N T

The plaintiff herein Mr. Misheck Mwilaria sued the defendant herein Mr. Stanley M'Ngiyu seeking a declaration that all that parcel of land known as plot No.1141 Kiguchwa Adjudication Section measuring 1.36 acres belong to him to the exclusion of all others and an order of permanent injunction against the defendant, his assigns, agents or servants or anybody acting on his behalf or behest from trespassing, entering, encroaching and/or occupying the parcel of land known as 1141 Kiguchwa Adjudication Section. The plaintiff further sought an order of eviction against the defendant from plot No.1141 Kiguchwa Adjudication Section with costs and interest of the suit.

The plaintiff before filing this suit obtained consent of the Land Adjudication Officer, which consent was issued on 24th August, 2009. Copy of the consent letter was contemporaneously filed with the plaint.

The defendant was served with summons to enter appearance with a copy of plaint on 11th September, 2009 by Court Process Server one David Mwenda Kanyamu who knew the defendant. The defendant did not enter appearance hence the plaintiff requested for judgment through request for judgment dated 20th November, 2009. Interlocutory judgment was entered against the defendant in default of appearance on 22nd December, 2009.

The plaintiff listed this suit for formal proof and after court was satisfied that the plaintiff had properly served the defendant and that interlocutory judgment had been properly entered, it ordered the plaintiff to proceed with his suit.

The plaintiff in his evidence before the court, testified that he is the owner of land number 1141 Kiguchwa Adjudication Section. That his land measures 1.36 acres. He averred that he had a letter from Kiguchwa Adjudication Section dated 28.6.2009 confirming that the land is his. He produced the letters as exhibit P.1. The plaintiff further testified that defendant, who is his neighbor, wrongfully and unlawfully entered into the plaintiff's land on 14th April, 2009 and started plucking the plaintiff's tea leaves. The plaintiff further testified that when he purchased the land it had tea bushes and he had purchased the land together with tea bushes. That when the plaintiff asked the defendant why he was plucking the plaintiff's tea leaves the defendant told the plaintiff that the tea bushes belonged to the defendant. The plaintiff testified that he proceeded to see the seller of the land and tea bushes who told him the defendant did not own the tea bushes nor did he have anything on the land. The plaintiff testified that the defendant has since 14th April, 2009 not stopped plucking the plaintiff's tea leaves from ½ an acre. The plaintiff testified that he sued the defendant at the lower court and his suit was dismissed for want of consent of the Land Adjudication Officer. The plaintiff subsequently filed another suit at Tigania Law court's but he withdrew the same. He later obtained consent of the Land Adjudication Officer before filing the present suit. The consent is dated 24th August, 2011. The plaintiff produced the Land Adjudication Officer's consent as exhibit P.2. The plaintiff asked the court to grant prayers sought in his plaint.

I have considered the pleadings in this case. I have also carefully considered the evidence adduced by the plaintiff in support of his case. I also considered the written submissions by the Counsel for the plaintiff and supportive authority attached thereto.

The issue for consideration in this suit is whether the plaintiff has established that he is the owner of the suit land. The other issue for determination is whether the plaintiff has proved on a balance of probabilities that he is entitled to prayers sought in his plaint.

As per plaintiff's evidence he purchased the suit land from a third party and took possession of the same. According to letter from Kiguchwa Adjudication Section dated 26th August, 2009 the suit land is registered under Misheck M. Mwilaria and that there is no any pending dispute as per Land Adjudication Office records. The plaintiff averred that when he asked the defendant why he was plucking his tea leaves, the defendant claimed the tea bushes were his. The plaintiff approached the seller who told him the defendant owns nothing on the land.

I have evaluated the plaintiff's evidence which has not been contravened as the defendant did not file any defence. The plaintiff has established that he is the owner of all the suit land known as 1141 Kiguchwa Adjudication Section measuring 1.36 acres. He is as per exhibit P1 registered owner of the parcel land and there is no pending dispute between the plaintiff and the defendant or any other party. That though titles in respect of the said area are yet to be out certificate of title in Kenya is held as conclusive evidence of proprietorship, unless otherwise established.

Section 26(1) of the Land Registered Act, 2012(No.3 of 2012) provides:-

“The certificate of title issued by the Registrar upon registration, or to a purchaser or 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, procedurally or through a corrupt scheme.

In the instant case the plaintiff has established that he is the owner of the suit land. The plaintiff as the owner of the suit land is therefore entitled to all rights that go with proprietorship of the land. This includes exclusive occupation and possession without any interference of his occupation and utilization of the suit land.

I find also the plaintiff has established, on balance of probabilities that the defendant trespassed into the plaintiff's land without his consent and authority and therein has been plucking the plaintiff's tea leaves. The plaintiff has proved that the defendant has wrongfully, unlawfully and without any justifiable cause been plucking the plaintiff's tea leaves.

I find the plaintiff has proved his case on balance of probabilities and judgment is therefore entered in favour of the plaintiff as follows:-

1. a declaration be and is hereby made that all the parcel known as plot 1141 Kiguchwa Adjudication Section measuring 1.36 acres or thereabout belong to the plaintiff to the exclusion of all others and an order of permanent injunction do issue against the defendant, his assigns, agents and or servants or anybody acting on his behalf or behest from trespassing, entering, encroaching and or occupying all that parcel of land known as KIGUCHWA ADJUDICATION SECTION.

2. An order of eviction against the defendant from Plot No.1141 KIGUCHWA ADJUDICATION SECTION.

3. Costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT MERU THIS 18TH DAY OF OCTOBER, 2012.

**J. A. MAKAU
JUDGE**

DELIVERED IN OPEN COURT IN PRESENCE OF:

1. Mr. A. Anampiu h/b for Murithi for plaintiff

**J. A. MAKAU
JUDGE**