

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 74 of 2007

BENARD KIPKOECH.....PLAINTIFF

VERSUS

SAMUEL KARIUKI MWANGI.....DEFENDANT

JUDGMENT

Benard Kipkoech, the plaintiff herein, instituted this suit against the defendant, for the claim that he is the registered proprietor of land parcel number Dundori/Mugwathi Block 2/99 measuring approximately 1.8 hectares. The plaintiff alleges that sometimes in the year 2006, the defendant entered his land without any authority and purported to own the same and has interfered with the plaintiff's right to use and occupation. The plaintiff sought for a declaration that the defendant is a trespasser on the suit premises, an order that the defendant do deliver vacant possession and costs of the suit.

The defendant was served with the summons but he did not file a defence, thus the matter was set down for formal proof. The plaintiff testified and produced the title to the suit premises which was transferred to him on 18th January 2001. He also produced a certificate of official search. The plaintiff also relied on the evidence of one Catherine Cherotich Kipkoech. She testified that she was the original allottee of the suit premises as a member of Kalenjini enterprises or Rift Valley Enterprises. As a shareholder, she was allocated the suit premises and issued with a title in 1997. She produced a copy of that title. She testified that she transferred the title to her son who is the plaintiff in this matter but in 2006, the defendant started interfering with the peaceful occupation of the suit land by the plaintiff.

No evidence was offered by the defence, however, before the hearing of the matter, Mr. Ikua appearing for the defendant indicated to the court that they had a preliminary objection to raise on points of law and the court ruled that if the defendant intended to raise a preliminary objection on a point of law, he could do so at the stage of submissions. However Mr. Ikua walked out of court and did not participate in this matter any further.

Based on the evidence before the court, I find that the plaintiff was able to prove that he is the registered proprietor of the suit premises. The title is registered under the Registered Lands Act. It gives the registered owner, absolute proprietorship to the suit premises. The title is also conclusive evidence that the plaintiff is the proprietor of the suit land. The evidence by the plaintiff was not controverted. The plaintiff has proved his case on a balance of probability that he is entitled to the prayers sought. Judgment is therefore entered for the plaintiff against the defendant as follows:

- (a) The defendant is declared a trespasser on the plaintiff's parcel of land Dundori/Mugwathi/Block 2/99.
- (b) The defendant does deliver vacant possession of the suit premises within 60 days from the date of this judgment and in default eviction order to issue.
- (c) The plaintiff is also entitled to the costs of this litigation.

It is so ordered.

Judgment read and signed on 1st day of April, 2009

M. KOOME

JUDGE