



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 1279 of 2007**

**CHARLES MWANGI.....PLAINTIFF**

**VERSUS**

**PAUL MUSILI.....1<sup>ST</sup> DEFENDANT**

**PHILIP KAGUNGA.....2<sup>ND</sup> DEFENDANT**

**FESTUS MUKIRI.....3<sup>RD</sup> DEFENDANT**

**RULING**

Before me is an application by way of a Chamber Summons in which the Plaintiff seeks orders:

- (1) That an order in the nature of mandatory injunction be issued against the defendants requiring the defendants, their servants and/or agents to vacate the suit property LR No. 9042/150 Embakasi within the city of Nairobi and failure in so vacating, forceful eviction be effected on the defendants their servants and/or agents pending the hearing and determination of this suit.
- (2) That the Officer Commanding Police station (OSC) in the area do implement the said court order.

In support of the application Charles Mwangi has sworn an affidavit giving grounds. The facts as gathered from the affidavit evidence and the pleadings are that the suit property being LR No 9042/150 was allocated to the plaintiff vide Grant NO. IR 68698 on 1<sup>st</sup> November 1995. The Grant read in part as follows:-

**“KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of shillings one hundred and forty thousand (Sh.140,000/=) by way of standing premium paid on or before the execution hereof THE PRESIDENT OF THE REPUBLIC OF KENYA hereby GRANTS unto CHARLES MWANGI of Nairobi Post Office Number 34174 (herein called the Grantee) ALL that piece of land situate in the City of Nairobi Area containing by measurement 0.4000 of a hectare or thereabout that is to say LR No. 9042/150 .....**”

That on or about November 2003 the defendants without any lawful justification and without the consent of the plaintiff flagrantly entered the suit property and started depositing thereon building materials.

That following the defendants illegal and unlawful occupation of the suit property aforesaid the plaintiff requested the defendants to vacate therefrom but the defendants ignored the plaintiff’s request

and continued with the illegal occupation and hence this suit and the application. When this application came up for hearing, the respondent did not appear despite the fact that they were served and there is return of service filed. The return of service was filed by Paul Nduati Wainaina who avers as follows:

- (1) That I am a process server of this Honourable Court duly authorized to swear this affidavit.
- (2) That on 7<sup>th</sup> June 2008 at about 11 a.m accompanied by Charles Mwangi the plaintiff herein and a Mr Simon Thuo he travelled to Embakasi Village . That on arrival the plaintiff showed him a small office where the defendants carry on business of selling or allocating plots. That the plaintiff pointed out to him Paul Musili and Phillip Kagunda the 1<sup>st</sup> and 2<sup>nd</sup> defendants. He served them but they refused to acknowledge service. That at the same time the plaintiff pointed out to him the 3<sup>rd</sup> defendant Simon Thuo whom he served but he too refused to acknowledge service.

The plaintiff had earlier obtained a temporary order of injunction restraining the defendants from trespassing upon the suit land and on being served with the order the defendants voluntarily vacated the suit premises and went away.

I have carefully considered the application in light of the affidavits on record and the submissions by counsel for the plaintiff. It is evident that the plaintiff was allocated the suit land by the President on behalf of the Government and the same was registered under the provisions of the Registration of Titles Act Cap. 281 and was issued with a Certificate of Registration Section 23 (1) of the Act provides that the Certificate of Title issued by the registrar to purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereof and the title of that proprietor shall not be subject to challenge, except on the grounds of fraud or misrepresentation to which he is proved to be a party.

There is no defence filed to challenge the claim of the plaintiff. The Court of Appeal in the case of DR JOSEPH A SONGOK VS. JUSTICE MOIJO OLE KEIWUA and 4 OTHERS Civil Appeal No. 6 of 1997 (unreported) faced with a similar situation had this to say referring to Cap. 281.

**“Section 23 (1) of the Act gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights to title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.”**

The plaintiff was issued with a grant by the President. The suit land was registered in his name under the provisions of the Registration of Titles Act Cap 281. As I have stated above such registration can only be subject to challenge on grounds of fraud or misrepresentation but none has been alleged. That being the position the plaintiff is the absolute and indefeasible owner of the suit premises being LR No. 9042/150.

Accordingly the plaintiff’s application is allowed as prayed.

Dated and delivered at Nairobi this 17th day of September 2008.

**J. L. A. OSIEMO**

**JUDGE**