

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(MILIMANI LAW COURTS)

CIV CASE 1967 OF 98

ALLAN OKACH OSURA & ANOR.....PLAINTIFF

VERSUS

ERNEST MURIUKI MUNGAI.....DEFENDANT

RULING

In this application filed on 30th May 2002 under the provisions of S. 3A of the civil Procedure Act and Order 35 of Rule 1(L) of the Civil Procedure Rules, the defendant seeks summary judgment against the plaintiff as prayed in the counterclaim as it is the registered owner of the suit premises and 2nd defendants suit dismissed and the defendants are trespassing on the suit premises. Although served the plaintiffs/respondent did not file a replying affidavit or grounds in opposition.

The plaintiffs, Allan Okoth Okach and Paul Okach Senaji by their suits filed on 7th June, 2000 and 10th September, 1998 had sued the defendant applicant, Ernest Muriuki Mungai and the Nairobi City Council for orders restraining the applicant from entering a plot known Nairobi/Block 83/14/337 and an order that the court do allocate plot No. A 148 Umoja also known as Nairobi/Block 83/14/337 to the plaintiffs in place of the applicant herein. On being served the applicant filed a defence contending that the suit premises belong to him and counterclaimed for the eviction of the respondents there from. The applicant now seeks summary judgment and has supported his claim with a certificate of lease under the Reported Land Act registered on 19th September while the respondents rely on an unreported lease issued to them by the City Council.

According to S. 27, 28, and 29 of the Registered Land Act, the registration of a person as proprietor of some registrable interest in Land for consideration rests all rights thereto in the person so registered to the exclusion of all other.

Consequently, until this registrable interest in Land is so registered, his interest to such land can be defeated through registration of authors right if the subsequent right is acquired through a court order or for valuable consideration.

In the instant case, the applicant was the first one to acquire an interest in the suit premises in 1982. There is also no dispute that the Council have purported to cancel the interest in 1994 and re-allocated the plot to the plaintiffs whose allocation has not to date been registered. However, as already state, on 24th July, 1997 the applicants lease of the land from the Council for valuable consideration the was registered. Consequently, as from then the applicant interest superceded all other interests and become entitled to the suit premises to the exclusion of all others. The respondents therefore have no more right to the suit premises nor can they defeat the applicants interest as it was acquired for valuable consideration.

In view of the above and for the aforesaid reasons, I am satisfied the applicant is entitled to the sole ownership of the suit premises and I hereby enter judgment in his favour against the defendants as prayed in prayer 1 of the notice of motion dated 16th May, 2002. I also award the costs of the institution to the applicant.

Orders Accordingly.

Delivered and signed this 9th day of December 2002.

G. P. MBITO

JUDGE