



**Mumo v Muema (Environment & Land Case E004 of 2023)
[2024] KEELC 1382 (KLR) (6 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1382 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE E004 OF 2023**

**TW MURIGI, J
MARCH 6, 2024**

BETWEEN

JOHN WAMBUA MUMO PLAINTIFF

AND

CECILIA MUEMA DEFENDANT

JUDGMENT

1. By a Plaint dated 1st February, 2023, the Plaintiff prays for judgment against the Defendant for:-
 - a. An eviction order against the Defendant and/or any other person that she may have placed on land parcel Makueni/Kako/332 to be enforced by an auctioneer to be appointed by the Plaintiff and the OCS Makueni Police Station do offer security in ensuring compliance.
 - b. An order of permanent injunction barring the Defendant from encroaching/trespassing and/or doing any acts of waste on land parcel Makueni/Kako/332.
 - c. Costs of this suit and interest at court rates.
 - d. Any other relief that this honourable court may deem fit to grant.
2. Despite being served with Summons to Enter Appearance, the Defendant did not enter appearance or file a Defence. The matter proceeded for hearing as an undefended suit on 15th November 2023.

Plaintiff's Case

3. At the trial, the Plaintiff testified as the sole witness in support of his case. He adopted his witness statement dated 1st February 2023 as his evidence in chief. He also produced the documents in the list of documents as PEX1-6 in support of his case.



4. The Plaintiff testified that he is the registered owner of the suit property having acquired the same through transmission in Makueni Succession Cause No. 111 of 2017. He testified that Benard Musyoka Ndambuki filed an affidavit of protest against the confirmation of the grant on the grounds that he had purchased the suit property in the year 1976. That vide a ruling delivered on 22nd June 2017, the court dismissed the protest and approved the grant and mode of distribution thereof. It was his testimony that the Protestor left the suit property immediately after the court rendered its decision but the Defendant remained on the land. He stated that the Defendant always turns violent and threatens to kill him whenever she sees him. He urged the court to grant the orders sought in the Plaintiff.
5. After the close of the hearing, the Plaintiff filed his written submissions dated 23rd November 2023, which I have duly considered.

Analysis And Determination.

6. Although the suit was undefended, the Plaintiff has a duty to formally prove his case on a balance of probabilities as required by the law.
7. In so finding, I am persuaded by the holding in the case of *Kirugi and Another v Kabiya & 3 Others* (1987) KLR 347 where the Court of Appeal held that:-

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof”. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”
8. Similarly, in the case of *Gichinga Kibutha v Caroline Nduku* (2018) eKLR the Court held that:-

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest.”
9. Having considered the pleadings, the evidence on record and the submissions by the Plaintiff, the following issues fall for determination;
 - i. Whether the Plaintiff is the registered proprietor of the suit property?
 - ii. Whether the Plaintiff is entitled to the orders sought?

Whether the plaintiff is the registered proprietor of the suit property

10. The Plaintiff testified that he is the registered proprietor of the suit property having acquired the same by way of transmission. He testified that after he instituted Makueni Succession Cause No. 111 of 2017 in respect of the Estate of his deceased father, Benard Musyoka Ndambuki filed a protest against the confirmation of the grant claiming that he had purchased the suit property in the year 1976.
11. In its decision rendered on 22nd June 2017 in Makueni High Court Probate and Administration No. 111 of 2017 produced as (PEX3), the court made the following orders:-
 - i. The protest is dismissed.
 - ii. The grant herein is allowed and the distribution approved as proposed.
 - iii. Parties to bear their own costs.



12. The Plaintiff produced a copy of the certificate of confirmation of Grant (PEX5) which shows that the suit property was to be registered in his name. He also produced a copy of the title deed (PEX1) and a copy of the certificate of official search (PEX2) which clearly show that he is the registered owner of the suit property.
13. The law is very clear on the position of a holder of a title in respect of the land. Section 24 (a) of the [Land Registration Act](#) provides for the interest conferred by registration. It provides as follows:-

“Subject to this Act the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all the rights and privileges belonging or appurtenant thereto.”
14. Section 25 of the [Land Registration Act](#) provides for the rights of a proprietor. It provides as follows:-
 - I. The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided by this Act and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject;...
15. These provisions vest on the registered owner of land with rights and privileges and provides for instances when the right can be taken away.
16. Section 26(1) of the [Land Registration Act](#) provides as follows:-

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer shall be taken by all the courts as prima facie evidence that the person named as the proprietor of the land is absolute and indefeasible owner 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, unprocedurally or through a corrupt scheme.”
17. The registration of the Plaintiff on the suit property was via transmission pursuant to Makueni Succession Cause No. 111 of 2017. No evidence was adduced to show that the Plaintiff obtained the title through fraud or misrepresentation, illegally, unprocedurally or through a corrupt scheme. This court therefore finds and holds that the Plaintiff is the registered proprietor of the suit land.

Whether the plaintiff is entitled to the orders sought

18. The Plaintiff is seeking for an order of eviction against the Defendant or anyone whom she may have placed on the suit property and an order of permanent injunction restraining the Defendant from encroaching/trespassing onto the suit property. The Plaintiff informed the court that the Defendant has refused to vacate from the suit property and usually threatens to kill him whenever she comes across him. In this regard, the Plaintiff produced a Demand letter/Eviction Notice dated 101/11/2021(PEX6) to corroborate his evidence.
19. Having established that the Plaintiff is the registered owner of the suit property, I find that he is entitled to all the rights and privileges belonging or appurtenant thereto. The Plaintiff is therefore entitled to the orders sought in the Plaintiff.



20. The upshot of the foregoing is that the Plaintiff has proved his case on a balance of probabilities against the Defendant as required.
21. Consequently, I enter judgment for the Plaintiff against the Defendant in the following terms:-
 - a. An eviction order be and is hereby issued against the Defendant and/or any other person that she may have placed on land parcel Makueni/Kako/332 to be enforced by an auctioneer to be appointed by the Plaintiff and the OCS Makueni Police Station do offer security in ensuring compliance.
 - b. An order of permanent injunction be and is hereby issued barring the Defendant from encroaching/trespassing and/or doing any acts of waste on land parcel Makueni/Kako/332.
 - c. The Plaintiff is awarded costs of the suit with interest at court rates.

HON. T. MURIGI

JUDGE

JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAM THIS 6TH DAY OF MARCH, 2024.

In the presence of:

Court assistant Kwemboi.

Judah Kioko for the Plaintiff

