



**Makton Holdings Limited v Waweru; Chief Land Registrar & another (Interested Parties)
(Environment & Land Case E008 of 2022) [2024] KEELC 3241 (KLR) (9 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3241 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E008 OF 2022**

MD MWANGI, J

APRIL 9, 2024

BETWEEN

MAKTON HOLDINGS LIMITED PLAINTIFF

AND

JOHN WAWERU ALIAS SIMON WAITHIRA DEFENDANT

AND

CHIEF LAND REGISTRAR INTERESTED PARTY

HON. ATTORNEY GENERAL INTERESTED PARTY

JUDGMENT

1. The Plaintiff in this case pleads that it is the registered proprietor of all that property known as Title No. 67822/1, L.R. No. 7785/554 (original 7785/10/378) as delineated on Land Survey Plan number 181754 situated in Runda along Runda Crescent Road (hereinafter referred to as ‘the suit property’). The Plaintiff avers that it purchased the suit property vide an agreement of 5th October, 2006, for a consideration of Kshs 9,000,000/=. The transfer in Plaintiff’s favour was effected on 29th December, 2006. The Plaintiff took possession of the suit property and erected a perimeter wall around the entire property.
2. In the year 2008, the Plaintiff used the title of the suit property to secure a financial facility from Southern Credit Banking Corporation Ltd. Upon completing the repayment, the title was discharged on 5th November, 2015.
3. The Plaintiff continued to enjoy quiet and uninterrupted possession of the suit property without any disturbance or hindrance from anybody until the 13th January, 2022. On the material date, the Director of the Plaintiff was called by a neighbor and informed about some unknown persons who had been seen loitering inside the suit property and were apparently engaged in some sort of construction



- activities. Upon visiting the suit property, the Director of the Plaintiff Company was informed that the 1st Defendant herein, one John Waweru alias Simon Waithira was the one who had sent the individuals who had been seen on the suit property with instructions to construct a gate along the driveway leading to the suit property.
4. The Plaintiff Company managed to eject the individuals from the suit property. On the following day, 14th January, 2022, unknown individuals alleging to have been sent by the 1st Defendant once again attempted to gain access to the suit property but they were successfully resisted by the guards stationed at the suit property by the Plaintiff Company. The individuals were alleging that the 1st Defendant was the registered proprietor of the suit property and intended to commence construction therein.
 5. The Plaintiff Company through one of its Directors attempted to reach out to the 1st Defendant through a mobile phone number given by the individuals claiming to have been sent by him to clarify the matter but the 1st Defendant became evasive and refused to meet the representatives of the Plaintiff Company. The 1st Defendant nonetheless continued to threaten to invade the suit property necessitating the filing of this suit. The Plaintiff further made a report of the incidents at Runda Police station.
 6. The Plaintiff therefore prays for judgment against the Defendant for:
 - a. A permanent injunction to be issued restraining the Defendant, his servants, workers, agents and/or employees from passing off or otherwise claiming proprietary interest over the property known as Title No. 67822/1, Land Reference Number 7785/554 (original 7785/10/378) as delineated on Land Survey Plan Number 181754 situated in Runda along Runda Crescent Road, Nairobi or any part thereof;
 - b. A permanent injunction to be issued restraining the Defendant, his servants, workers, agents and/or employees from interfering, trespassing, alienating, selling, transferring or in any other manner dealing or disposing of the property known as Title No. 67822/1, Land Reference Number 7785/554 (original 7785/10/378) as delineated on Land Survey Plan Number 181754 situated in Runda along Runda Crescent Road, Nairobi or any part thereof;
 - c. A declaration that the Plaintiff is the legal and registered owner to Title No. 67822/1, Land Reference Number 7785/554 (original 7785/10/378) as delineated on Land Survey Plan Number 181754;
 - d. A declaration that the title document held by the Plaintiff being the Certificate of Title No. 67822/1 over Land Reference Number 7785/554 (original 7785/10/378) as delineated on Land Survey Plan Number 181754 is the sole and legitimate title document over the Property.
 - e. General damages;
 - f. Costs of the suit;
 - g. any other relief that this Honourable Court deems fit.
 7. The Defendant despite being served did not enter appearance nor file a statement of Defence. The matter was therefore set down for hearing under the provisions of O.10 rule 9 of the [Civil Procedure rules](#). Though the interested parties had entered appearance in this matter, they did not participate in the hearing of the case despite having been duly served with a hearing notice.



Evidence Adduced before the Court

8. The Plaintiff called one (1) witness, one Mr. Mohammed Nyaoga, its Director and an advocate. He adopted his witness statement dated 18th January, 2022 which essentially affirmed the Plaintiff's case as pleaded in the Plaint dated 25th January, 2022.
9. The witness testified that the Plaintiff Company acquired the suit property from a Mr. Alfredo Fiachetti on 5th October, 2006 for a consideration of Kshs 9 million. The Plaintiff had at one point in time acquired a conditional development approval from the Nairobi City Planning Directorate but was unable to construct and the approval lapsed after 2 years.
10. The filing of this suit was necessitated by intrusion by the Defendant who made attempts to unlawfully take over the suit property from the Plaintiff. The Plaintiff Company successfully resisted the intrusion and put a guard over the suit property and has subsequently continued to enjoy possession.
11. PW1 stated that he learnt about the Defendant from the people who had allegedly been sent by him to construct a gate on the driveway to the suit property. They gave out his mobile number to him. PW1's attempts to organize a meeting with him at Gigiri Police Station flopped. He did not show up. He subsequently stopped picking PW1's calls.

Directions by the court

12. Upon close of the hearing, the court directed the Plaintiff to file written submissions. The Plaintiff complied and the court has had an opportunity to read the said submissions which now form part of the record of this court.

Issues for Determination:

13. The issues for determination in this matter are rather straight forward. The Plaintiff company prays for a declaration that it is the legal owner of the suit property, a permanent injunction, general damages and costs. The issues for determination then are:
 - a. Whether the Plaintiff Company has established that it is the legal owner of the suit property.
 - b. Consequent to (a) above, whether the Plaintiff company is entitled to the orders sought.

Analysis and determination

14. Amongst the exhibits that the Plaintiff presented before the Court is the title to the suit property and an official certificate of search dated 17th January, 2022.
15. Section 26 of the *Land Registration Act* succinctly provides that a Certificate of Title issued by the Registrar upon registration or to a purchaser upon a transfer, as in this case, is *prima facie* evidence that the person named as proprietor of the Land is the absolute and indefeasible owner of the land. In this case, from the evidence adduced before the Court, the Plaintiff Company has established that it is the absolute and indefeasible owner of the suit property herein.
16. Registration of a person as the proprietor of Land vests in that person the absolute ownership of the Land together with all rights and privileges belonging or appurtenant thereto. Such rights shall not be liable to be defeated except as provided under the Law. They shall be free from all other interests and claims subject only to the leases, charges and other encumbrances and to the conditions and



restrictions, if any, shown in the register and to such overriding interests under Section 28 that do not require to be noted in the register.

17. From the official search exhibited before the Court, there are no interests or claims and or encumbrances, conditions and restrictions on the register of the suit property.
18. From the foregoing, the Plaintiff being the registered owner of the suit property is the absolute owner of the suit property. The Plaintiff Company is entitled as provided for under Section 24 of the [Land Registration Act](#) to all the rights and privileges belonging or appurtenant thereto without interference from any other person.
19. Accordingly, the court's finding is that the Plaintiff is entitled to a permanent injunction as sought in the Plaint restraining the Defendant, by himself, servants, agents, employees or any other person from interfering with, trespassing, or in any other way dealing with the suit property or passing off or otherwise claiming proprietary interest over the suit property.
20. There is a noticeable worrying trend in Nairobi of Criminals in cahoots with a few corrupt officials in the Land office to create parallel titles over unoccupied parcels of Land with which they lay claim over such parcels. They usually take possession and subsequently, sooner than later, sell the said parcels using the parallel fraudulent titles to unsuspecting third parties. This explains the many cases of such nature before our Courts.
21. It is the high time that this dangerous practice was reined on. The Cabinet Secretary in Charge of Lands has on numerous occasions acknowledged this vice.
22. This case may be one of such cases. The Court directs that a copy of this judgment be served upon the Director of Criminal Investigations for thorough investigations and prosecution of the culprits.
23. The Plaintiff in this case has additionally prayed for general damages against the Defendant. From the evidence of the witness who testified on behalf of the Plaintiff Company, they were able repulse the invaders who were allegedly sent to the suit property by the Defendant. Therefore, the Plaintiff Company has and has had possession of the suit property.
24. There was as a matter of fact no trespass onto the suit property. I therefore do not find it appropriate to award general damages for trespass.
25. On the issue of costs, the Court awards the Plaintiff the costs of the suit, being the successful party.
26. The conclusion is that the Plaintiff's case against the defendant succeeds. The court declares that the Plaintiff company is the legal owner of the suit property. Further, the plaintiff company is granted an order of permanent injunction restraining the Defendant, by himself, servants, agents, employees or any other person from interfering with, trespassing, or in any other way dealing with the suit property or passing off or otherwise claiming proprietary interest over the suit property. The Plaintiff shall have the costs of this suit against the Defendant.

It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF APRIL, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:



Mr. Nkarichia for the Plaintiff

N/A for the Defendant and the Interested Parties

Yvette: Court Assistant

M.D. MWANGI

JUDGE

