



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 157 OF 2018

DISHON NYUTU MUIRU.....PLAINTIFF

VERSUS

WESLEY CHERUIYOT RUGUT.....DEFENDANT

JUDGMENT

(Suit by plaintiff seeking to have the defendant restrained from the suit land; plaintiff having title to the suit land; defendant not filing any defence and not contesting the case of the plaintiff; judgment entered for the plaintiff)

1. This suit was commenced through a plaint which was filed on 23 April 2018. In the plaint, the plaintiff pleaded that he is the registered owner of the land parcel Nakuru/Sururu/843 which is land measuring 6 Ha. He pleaded that the land is in Mauche Settlement Scheme and that he was issued with a title deed on 16 July 1997. He has pleaded that in the year 2003, he leased out the farm to the defendant but in the year 2005, the defendant started claiming ownership of the land. The defendant then lodged a claim before the Land Disputes Tribunal sitting at Mauche in the year 2005, and on 6 May 2005, the Tribunal held that the land belongs to the defendant. This decision was however quashed vide Nakuru High Court Miscellaneous Application No. 632 of 2006. The plaintiff has pleaded that despite this decision, the defendant has continued utilizing the suit land. In the suit, the plaintiff has asked for orders for a declaration that he is the legal owner of the suit land, an order of permanent injunction to stop the defendant from being on the suit land, an order of eviction, and costs.

The defendant appointed a firm of advocates who later ceased acting for him before a defence could be filed. This suit is thus undefended. The defendant did not also appear in court during the hearing of the matter despite being duly served.

2. In his evidence, the plaintiff more or less reiterated what is in his plaint, and he produced the award of the Land Disputes Tribunal and the High Court decision which quashed the award. He produced a copy of the title deed and the green card (extract of the register) to demonstrate that he is the registered proprietor of the suit land.

3. The pleadings and the evidence of the plaintiff are uncontroverted. I have seen from the copy of the title deed and the green card that the plaintiff was registered as proprietor of the suit land on 16 July 1997. I have nothing before me which would vitiate the title of the plaintiff. The defendant has not come to court to demonstrate that he has a right to be on the suit land. Being the registered proprietor, the plaintiff is the person vested with rights of ownership including the right to exclusive use and possession of the suit land. This is provided for in Section 24 of the Land Registration Act, 2012 which provides as follows :-

Section 24 – Interest conferred by registration

Subject to this Act –

(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

4. It will be seen from the above that it is the registered proprietor who is vested with all rights and privileges over the land in issue.

5. Given the above, I have no reason to deny the plaintiff the orders that he has sought and I now make the following orders :-

i. That as between the plaintiff Dishon Nyutu Muiru, and the defendant, Wesley Cheruiyot Rugut, it is hereby declared that it is the plaintiff who has title to the land parcel Nakuru/Sururu/843.

ii. That the defendant is hereby ordered to give vacant possession within 30 days of being served with this judgment and/or decree and in default he be forcibly evicted.

iii. That upon his eviction, the defendant is hereby permanently restrained from entering, being upon, utilizing, or in any other way interfering with the plaintiff's possession of the land parcel Nakuru/Sururu/843.

iv. That the defendant will shoulder the costs of this case.

6. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 1st day of October 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Abuya holding brief for Mr. Ikua for the plaintiff.

No appearance for the defendants- Absent.

Court Assistants: Nancy Bor/Alfred Cheron.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU