



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 232 OF 2015

MARGARET WAIRIMU NGUGI

YUSUF GITHINJI KAGESHO

JOHN MAINA (Suing on their own behalf and as the officials of WAMAGATA

SQUATTERS SELF HELD GROUP).....**PLAINTIFFS**

VERSUS

SAMUEL NDUNGU MUNYIRI

ANTHONY MAINA

SAMUEL WAITHAKA (Sued on their own behalf and as the officials of

MAGATA SELF HELP).....**1ST DEFENDANT**

MAGATA CO-OPERATIVE SOCIETY.....**2ND DEFENDANT**

JUDGMENT

(Plaintiffs having title to the suit land; defendants being in possession of it; plaintiffs suing inter alia for vacant possession and a permanent injunction against the defendants; defendants not entering appearance and not filing defence; plaintiffs' suit uncontested; judgment entered for the plaintiffs)

1. This suit was commenced through a plaint which was filed on 12 August 2015. The three plaintiffs are officials of Wamagata Squatters Self Help Group and they have filed this suit on behalf of the Group (hereinafter simply referred to as "The Group"). They aver that they are the registered owners and entitled to possession of the land parcel Nakuru Municipality/Block 16/835 (hereinafter referred to as "the suit land") which was allocated to them on 4 January 1999. They contend that the defendants, by way of fraud registered the suit land in their name, and have wrongfully taken possession of the suit land. In this case, the plaintiffs want orders that they be declared the owners of the suit land and a declaration that the defendants are in wrongful occupation of it. They also wish to have orders of eviction and orders to permanently restrain the defendants from the suit land. They further sought orders of general damages for trespass and costs.

2. Despite being duly served, the defendants did not enter any appearance and did not file a statement of defence. Neither did they appear during the hearing of the case.

3. The plaintiff's evidence was presented by John Wanjohi Maina, the treasurer of The Group. He testified that The Group is a registered Self Help Group with about 30 members. He stated that the defendants, Samuel Ndungu Munyiri, Anthony Maina, and Samuel Waithaka, were previously their members but they split to form the Magata Squatters Group. The members were previously workers in Wamagata Farm which was sold after which they became squatters. They went to the Provincial Administration and sought to be given the land that they were squatting, which he said was Government land, and the Government agreed to give them the same. They were advised to form a Group which they did. They were then issued with an allotment letter and a Part Development Plan (PDP) and they proceeded to pay the Government the requisite fees. One of the officials, Samuel Ndungu Munyiri, then took some of their members to form Magata Squatters Group, and he contended that they colluded with officials from the Lands office to process another allotment letter and a PDP, now in the name of Magata Squatters Group. The plaintiff's members complained to the Provincial Commissioner who advised them to go to the Lands officer, who wrote a letter to the Permanent Secretary of the Ministry of Lands, and confirmed that the land is owned by the plaintiffs. They were advised to survey the land, which they did, and the land was given the identity Nakuru Municipality Block 16/835 upon which they got

the title deed. He produced as an exhibit, an official search, which showed that Wamagata Squatters Self Help Group is the registered owner of the land. He stated that the Magata Squatters Group have however proceeded to subdivide the land amongst its members and that they even ignored an order of injunction issued in the earlier stages of this case.

4. I have assessed the plaintiffs' evidence and the documents that they produced as their exhibits. The documents of title, that is the title deed and the search, do indicate that the suit land is registered in the name of Wamagata Squatters Self Help Group. The Group got registered as proprietor on 2 December 2014. I have also seen that The Group is recognized by the County Government of Nakuru as the rate payer of the suit land. The law directs me to take title as prima facie evidence of ownership of land. This is provided for in Section 26 of the Land Registration Act, Act No. 3 of 2012, which provides as follows :-

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

5. Section 26 (1) does provide that the Certificate of Title is to be taken by the courts as prima facie evidence that the person named therein is the registered proprietor of the land in issue. Title can of course be impeached if it was procured by way of fraud or misrepresentation, or if it was issued illegally, unprocedurally, or through a corrupt scheme. The defendants did not appear to vitiate the title that the plaintiffs have displayed. I have nothing before me which would lead me to the conclusion that the title of the plaintiffs is a bad title which cannot be protected.

6. For the above reasons, I believe the plaintiffs' suit must succeed and I now make the following final orders :-

(a) That as between Wamagata Squatters Self Help Group and Magata Self Help Group and/or Magata Cooperative Society, it is Wamagata Squatters Self Help Group, which is entitled to ownership and possession of the land parcel Nakuru Municipality/Block 16/835.

(b) That an order is hereby issued directing the defendants and/or members of Magata Self Help Group and/or Magata Cooperative Society to give vacant possession of the land parcel Nakuru Municipality/Block 16/835 within 14 days of service of this judgment and/or decree, and in default an order of eviction do issue.

(c) That upon them vacating the suit land and/or upon their eviction, Magata Self Help Group and/or Magata Cooperative Society and/or their members and/or anyone claiming through them are hereby permanently restrained from entering, being upon, utilizing, or in any other way interfering with the plaintiffs' possession of the land parcel Nakuru Municipality/Block 16/835.

(d) That the defendants will pay the sum of Kshs.250,000/= as general damages for trespass and interest thereon at court rates from the date of this judgment.

(e) That the defendants will pay the costs of this suit.

7. 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 : -

Ms. Githae present for the plaintiffs.

Defendants not entered appearance.

Court assistants: Nancy Bor/Alfred Cheron.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU