



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 388 OF 2017

BENSON NDICHU MWENDIA.....PLAINTIFF

VERSUS

JOHNSON BYEBEI TUMDEFENDANT

JUDGMENT

(suit by plaintiff over two properties; plaintiff having title to the suit properties but defendant taking possession and erecting a wall; no defence filed by defendant; plaintiff's evidence on ownership not challenged; judgment entered for the plaintiff).

1. This suit was commenced by way of a plaint which was filed on 12 October 2017. In the plaint, the plaintiff pleaded that he is the registered and lawful proprietor of the land parcels Nakuru Municipality Block 15/682 and 683 (hereinafter referred to as "the suit properties") having become registered as proprietor on 2 November 2006 and having been issued with Certificates of Leases. He pleaded that he took possession of the land and put a caretaker on site. However, on 26 September 2017, some strangers came to the land and took possession of the two parcels of land and erected a wall and gate. The plaintiff has pleaded that upon investigations, he discovered that the defendant fraudulently caused himself to be registered as proprietor of the suit properties. In the case, the plaintiff has sought for orders that he be declared to be the rightful owner of the suit properties, an order of eviction of the defendant, and a permanent injunction against the defendant from the suit properties.

2. The defendant appointed an advocate to act for him but no defence was ever filed on his behalf.

3. In his evidence, the plaintiff testified that he was allocated the suit properties by the Municipal Council of Nakuru. He produced the Leases and Certificates of Lease to the two properties and the official search to show that he is the duly registered proprietor. He produced several receipts showing that he has been paying land rents and land rates.

4. As I earlier mentioned, the defendant did not file a defence and neither did he attend at the hearing of the matter. The only material that I have is that displayed by the plaintiff. I have no reason to doubt the leases and certificates of lease produced by the plaintiff to demonstrate that he is the rightful leaseholder of the suit properties. In addition to the leases and certificates of lease, the plaintiff produced the certificates of official search to the suit properties showing that he is the recognized registered owner of the suit properties. He is also the recognized rate payer as shown by the rates receipts. In the absence of any evidence from the defendant, the only conclusion that one can reach, is that it is the plaintiff who is the rightful owner of the suit properties. I am guided by Section 26 of the Land Registration Act, which provides as follows :-

26. (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.

5. The plaintiff has title and the defendant has availed none. I can only presume that the certificate of title that the plaintiff holds is evidence that the plaintiff is the absolute and indefeasible owner. I have not been given any evidence that the plaintiff acquired title by any fraud or misrepresentation and I have no evidence that he acquired the certificates of title, illegally, unprocedurally or through a corrupt scheme. I am therefore prepared to hold that the plaintiff has good title to the suit properties. As owner, it is the plaintiff who holds all rights in relation to the suit properties including the right of exclusive use, occupation, ingress and egress.

6. Given the above, I have no reason not to allow the plaintiff's suit. I allow it and make the following final orders:-

(i) That as between the plaintiff and defendant, it is hereby declared that it is the plaintiff who is the rightful and lawful proprietor of the land parcels Nakuru Municipality Block 15/682 and Nakuru Municipality Block 15/683.

(ii) That an order of permanent injunction is hereby issued, barring the defendant and/or his servants/agents, or anybody else claiming under him, from entering, being upon, utilizing, developing any structures, or in any other way interfering with the plaintiff's use and occupation of the land parcels Nakuru Municipality Block 15/682 and Nakuru Municipality Block 15/683.

(iii) That an order of eviction is hereby issued against the defendant and/or his servants/agents or anybody else claiming under him.

(iv) That the plaintiff is at liberty to demolish the wall erected by the defendant and/or his servants/agents if he so wishes but he is also at liberty to keep it if he so wishes.

(v) That the plaintiff shall have the costs of this suit.

7. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 4th day of July 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mrs. Karen Wanderi present for the plaintiff.

No appearance on part of M/s A.N Geke & Co. for defendant.

Court Assistant :Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU