



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 161 OF 2017

MARGARET WANJIRU WABURI/..... PLAINTIFF

VS

CHRISPIN MUIRURI 1ST DEFENDANT

GEOFFREY GITAU NDUNGU 2ND DEFENDANT

IRENE WANGARI NDEGWA 3RD DEFENDANT

KIMATHI SILAS KINIU 4TH DEFENDANT

RACHAEL WAMAITHA KURIA 5TH DEFENDANT

JOHN KAMAU NJUGUNA 6TH DEFENDANT

PURITY WANGARI NJUKI 7TH DEFENDANT

JUDGMENT

1. The Plaintiff filed a suit against the Defendants on the 9th June 2015 seeking orders that the Defendants do deliver vacant possession of L. R MITUBIRI/WEMPA/BLOCK2/1206 (suit land) to the Plaintiff.
2. The Plaintiff avers that she is the registered owner of the suit land having bought it from Methi & Swani Farmers' Cooperative Society where she was a shareholder and a member. She attached a certificate of title for the suit land registered in her name. It is her case that the Defendants have trespassed onto her suit land vide a fraudulent and illegal agreement of sale dated the 7.6.2013 purporting to have purchased the property from one Margaret Wanjiru Mburu, a person unknown to her.
3. In her evidence in Court the Plaintiff averred that the 7th Defendant has unlawfully constructed a house on the suit land without her permission and consent. As a result of the actions of the Defendants the Plaintiff has lost the right, enjoyment and use of the suit property.
4. Notwithstanding service by way of substituted services in the Daily Nation on the 10th March 2017, the Defendants did not file any memorandum of appearance nor defense to the Plaintiff's claim. The Plaintiff applied for and obtained judgment in default on the 23.10.2017 and thereafter set the matter for formal proof.
5. At the formal proof, the Plaintiff adopted the witness statement on record and reiterated the contents of both the plaint and the witness statement.
6. The Plaintiff's claim is based on proprietorship of the suit land and entitlement to the rights in respect to ownership of land. She has produced documentary evidence in form of a title deed over the suit land in her name as proof of ownership.
7. Section 24 of the Land Registration Act, 2012 states that 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. Section 25 of the said Act provides that the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in 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—to encumbrances charges or leases shown on the register and the overriding interests as stated in section 28 of the Act.

8. Section 26 of the Land Registration Act, 2012 provides;

(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

9. It is to be noted that the Plaintiffs claim is uncontroverted. However, she retains the responsibility to proof her case on a balance of probability. I have examined the impugned agreement of sale dated the 7.6.2013 between one Margaret Wanjiku Mburu and the 1st -6th Defendants. The said agreement for sale has been disowned by the Plaintiff on account that the vendor does not refer to her and in addition she is not called by the name Mburu but Waburi. She has termed it fraudulent and illegal. There is on record a letter from Methi & Swani Farmers Cooperative Society dated the 17.2.2015 which confirms that the Plaintiff was allotted the suit land based on ballot card No 640 and share certificate No. 311. The Court also notes that there is a certificate of official search on record dated 12.2.2015 denoting the Plaintiff as the registered owner of the suit land.

10. On the basis of prima facie evidence of ownership to land stated above and in the absence of evidence to the contrary, the Court sees no reason to deny the Plaintiff's claim. It is allowed as follows;

a). The Defendants be and are hereby ordered to deliver vacant possession of L. R MITUBIRI/WEMPA/BLOCK2/1206 (suit land) to the Plaintiff within the period of 90 days from the date of the judgement.

b). The costs of the suit to be met by the Defendants jointly and severally.

It is ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 2ND DAY OF JULY 2018

J.G. KEMEI

JUDGE