



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 53 OF 2009

CECILIA WANJIRU KAMAU.....1ST PLAINTIFF

PETER KAMAU KAHUNGI.....2ND PLAINTIFF

VERSUS

GEOFFREY THUO MBIRA.....1ST DEFENDANT

ANTHONY KIMANI MBIRA.....2ND DEFENDANT

SERAH WANJIRU MBIRA.....3RD DEFENDANT

EDWIN MUBI MBIRA.....4TH DEFENDANT

JUDGEMENT

1. The Plaintiffs who are husband and wife, filed suit on 12/2/2009 claiming that they purchased the land known as Kiambaa/Karuri/T.538 (“the Suit Property”) from Thuo Mubi and were registered as the joint owners of the land on 30/11/1979. They averred that after purchasing the Suit Property, they discovered that the Defendants had occupied the land without their authority. Despite several requests to the Defendants to vacate the Suit Property, they refused to do so and continued to occupy the Plaintiffs’ land thus preventing the Plaintiffs from developing their land which acts and trespass had occasioned them loss and damage.

2. The Plaintiffs sought the eviction of the Defendants from the Suit Property, vacant possession of the land, general damages, costs of the suit and interest. The court record shows that the Defendants were served but they did not file a defence. The process server, Willie Mwendwa Velle deponed in the affidavit of service filed in court on 2/10/2009 that he served the Defendants on 13/11/2010. The Defendants filed a memorandum of appearance on 24/2/2009. The Defendants participated in the proceedings by filing responses to various applications through the firm of R.H. Wanga & Company Advocates who also participated in the proceedings when the applications were urged.

3. The case proceeded for formal proof on 3/7/2018 when the 1st Plaintiff testified. The 2nd Plaintiff gave her authority to prosecute the case on his behalf. They were the registered owners of the Suit Property having purchased it from Geoffrey Thuo Mubi, who was the Defendants’ father. That upon purchasing the land they discovered that the Defendants were occupying it. They requested the Defendants to vacate the land but they refused to do so necessitating the filing of this suit.

4. The 1st Plaintiff produced the authority to act on behalf of the 1st Plaintiff. She also produced a copy of the search done on 28/1/2009 confirming that the Plaintiffs were registered as joint owners of the Suit Property on 30/11/1979. The search reflected that a caution was registered against the suit land on 25/7/1989 at the instance of Edward Bedan Mbira, who claimed to be a beneficiary of the land. She produced an abstract of title for the land which was certified on 29/1/2009, reflecting some entries in Part B which is the proprietary section. It showed that the Plaintiffs were registered as the proprietors of the land on 30/11/79 and that a certificate of title was issued to them on 3/12/79. Five entries were noted on the encumbrances section in Part C relating to charges to the Agricultural Finance Corporation. The last of these was a discharge of charge which was endorsed on 5/8/03.

5. She produced copies of the demand letters which their advocates issued to the Defendants on 11/1/2009 demanding that they vacate the Suit Property. She also produced a copy of the title deed which was issued to her and her husband on 11/6/2013 together with copies of the sale agreement drawn in 1979 with the translation that was done on 24/12/2002. The Plaintiff produced an acknowledgement dated 10/10/1997 vide which the seller, Geoffrey Thuo Mubi confirmed that he had received the balance of Kshs. 6613/= from the 2nd Plaintiff and that there was no balance outstanding from the sale. She also produced some receipts written in Kikuyu showing some figures dated 22/2/1980, 13/3/1980, 20/1/1980, 12/1/1980, 4/1/1980 and 10/1979.

6. The 1st Plaintiff also produced a copy of the Kiambu District Land Registrar's letter dated 9/3/2005 requiring Edward Bedan Mbira to remove the caution that he had lodged against the Suit Property. She produced a copy of the order issued in Kiambu Senior Principal Magistrates Court Miscellaneous Civil Application Number 9 of 2010 which directed the District Land Registrar, Kiambu to remove the caution lodged against the Suit Property. She urged the court to issue orders for the eviction of the Defendants from the Suit Property.

7. The Plaintiffs filed submissions. They submitted that they had provided uncontroverted evidence that they purchased the Suit Property for a consideration of Kshs. 35,000/= vide a sale agreement dated 13/11/1979 and that they were registered as the owners of the land. They mentioned that the 4th Defendant lodged a caution against the Suit Property which was removed through a court order and the Plaintiffs were issued a title deed on 11/6/2013. The Plaintiffs submitted that their efforts to get the Defendants to vacate the Suit Property had proved futile necessitating the filing of this suit. They submitted that they had proved on a balance of probabilities that they were the owners of the Suit Property and they were entitled to vacant possession. They urged that taking into account the length of time that the Defendants refused to grant them vacant possession of the land, they are entitled to general damages for loss of user.

8. The Plaintiffs relied on Section 24 of the Land Registration Act and urged that they were entitled to all the rights conferred on a registered proprietor of land by law. Further, that under Section 25 of that Act, their rights as registered proprietors could only be defeated in the manner provided in the act. They urged the court to take their registration as proprietors of the land as *prima facie* evidence that they are the absolute and infeasible owners of the suit land.

9. They relied on the decision in **Annah Kemuma Omwenga Angwenyi v Mokaya Momanyi & 8 Others [2018] eKLR** in which the court noted that since the Defendants did not file a defence the Plaintiff's title to the suit land remained unchallenged. The court observed that the land was owned by the Plaintiff and the Defendants therefore had no rights or justification to remain on the land. The court was also persuaded that the Defendant had unlawfully trespassed on the land.

10. The issue for determination in this suit is whether the Plaintiffs have proved their case to the standard required for the court to grant the orders they seek in the plaint. Evidence was given that the Plaintiffs bought the Suit from Geoffrey Thubi Mubi. The acknowledgement dated 10/10/1997 tendered in evidence confirmed that the 2nd Plaintiff paid the purchase price in full to the seller. The Plaintiffs established that they are the registered owners of the Suit Property and that the Defendants had trespassed on their land. There is no justification or reason why the Defendants should remain on the Suit Property.

11. The Plaintiffs have proved their claim to the Suit Property. The Defendants will be evicted from the land known as Kiambaa/Karuri/T.538 if they do not deliver vacant possession of the land to the Plaintiffs within 30 days of the date of this judgement. The eviction must be carried out in accordance with the law. The Plaintiffs are awarded general damages of Kshs. 500,000/=against the Defendants and the costs of the suit.

DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF SEPTEMBER 2021

K. BOR

JUDGE

In the presence of: -

Mrs. Wanja Wambugu for the Plaintiffs

Mr. V. Owuor- Court Assistant

No appearance for the Defendants