



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL CASE NO. 494 of 2017

NJIRU AGERIA DEVELOPMENT PLAINTIFF

VERSUS

JOSEPH MURAYI LUBANGA.....1ST DEFENDANT

STEPHEN OKOTH OCHOLA2ND DEFENDANT

JAMES KAMAU GITHAE3RD DEFENDANT

DICKSON MBOGO.....4TH DEFENDANT

GEORGE NYAOGA.....5TH DEFENDANT

CHRISANDUS BARASA.....6TH DEFENDANT

JOSEPH WACHIRA.....7TH DEFENDANT

JOHN OTIENO OJOW.....8TH DEFENDANT

BENARD WANYAMA.....9TH DEFENDANT

(Being sued through Twasonga Self Help Group)

JUDGMENT

1. This suit was filed vide a plaint dated 25.5.2017 where the Plaintiff averred that it was the registered owner of Land Parcel No. 13468 which land had been invaded by the Defendants sometimes in July 2017. The Plaintiff therefore sought the following orders:

a) An order of eviction of the Defendants, their servants, agents, and/or any other person claiming under them from LR. 13468

b) Mandatory injunction restraining the Defendants whether by themselves, servants, agents and or otherwise from any further acts of trespass, alienation, occupation, wastage or interfering with the Plaintiffs' right of ownership in L.R. 13468

c) General Damages for trespass.

d) Costs of the suit.

2. The Defendants were served with the pleadings but no statement of defence was filed, nor was a memorandum of appearance entered.

3. On 10.2.2021 the court directed that service of the hearing notice be effected through a prominent newspaper of which such service was effected as per the affidavit of service dated 12.10.2021. The suit therefore proceeds as an undefended claim.

4. PW1, Stephen Waweru Thuku adopted his statement dated 4.7.2018 as his evidence. He identified himself as the director of the Plaintiff's Company. He avers that his late father was a shareholder of Plaintiff's Company where he was allocated the suit land parcel L.R. No. 13468/772. However, about 5 years ago, Defendants invaded the land, digging out stones and even selling part of the land to innocent citizens. Efforts to seek assistance from the local administration have been futile as Defendants have used uncouth means to suppress justice.

5. PW2, Francis Mwangi adopted his statement dated 20.9.2019 as his evidence. He introduced himself as the current Chairman of the Plaintiff. He contends that the Plaintiff is the registered owner of Parcel L.R. 13468 located within Kasarani in Nairobi County.

6. The land was sub-divided and transferred to most of its members of which, some of the members settled on the land. However, Defendants invaded the land by force and started constructing permanent structures without any consent from the Plaintiff, thereby causing the Plaintiff to suffer irreparable loss.

7. In support of their claim, the Plaintiffs produced the documents in their list dated 5.7.2018 as their exhibits. The said documents include:

a) a Certificate of Incorporation.

b) Copy of the Company PIN

c) Copy of certificate of title of the suit property

d) Map of the suit property

e) Bundle of Photographs

Determination

8. I have perused the certificate of title issued on 30.5.1989 which was produced as an Exhibit, and the same indicates that the Plaintiff was indeed the registered owner of the suit land LR. 13468 , where the lease thereof was to run for 99 years with effect from 1.2.1989.

9. On 20.7.1989 in terms of entry No.2 in the certificate of the aforementioned title, the suit land was sub-divided into 200 plots running from 750-950 in numbers. The resultant plots were then transferred to various persons as captured from entry No 3-12 of the said title.

10. The content in the copy of certificate of title is in tandem with the evidence tendered by both PW1 and PW2 to the effect that the Plaintiff owned the suit land for the benefit of its members.

11. The provisions of **Section 25** of the **Land Registration Act** stipulate 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,....”

12. From the above provisions of law, it is clear that Plaintiff’s rights as the registered proprietor of the suit land are protected in law. I however find that the claim for general damages was not well articulated in evidence or through submissions, hence I disallow the said claim. **In the circumstances, the Plaintiffs’ claim is allowed in terms of prayers Nos. a), b) and d) in the plaint dated 25.7.2017.**

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2021 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

..... **FOR THE PLAINTIFF**

..... **FOR THE DEFENDANT**

COURT ASSISTANT: EDEL BARASA