



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO.1079 OF 2014

JOSEPH VICTOR MUTUA MUSYOKA.....PLANTIFF

VERSUS

EMBAKASI RANCHING COMPANY LIMITED....DEFENDANT

JUDGEMENT

1. The Plaintiff brought this suit against the defendant claiming the following reliefs:-

i. That Declaration does issue that the Plaintiff is the lawful owner of Plot Number M 449;

ii. That injunction does issue against the defendant, its agents, servants and/or employees from trespassing into, damaging ,or destroying the developments upon the plaintiff's plot number M 449 situated at Ruai within Embakassi Ranching Company Limited Settlement Scheme and or howsoever interfering with the plaintiff's and his agents or his ownership thereof through alienation or disposal or sale.

iii. The Defendant does execute transfer of Lease documents for plot number M 449 situated at Ruai within Embakassi Ranching Company Limited Settlement Scheme in favour of the plaintiff;

iv. Damages for the destruction (full particulars of which shall be presented during the hearing hereof as per the current valuation at that time).

v. Costs and interests.

2. The defendant which was duly served with summons to enter appearance neither entered appearance nor filed defence. The hearing proceeded by way of formal proof. The plaintiff bought plot No. M 449 (suit property) from one of the administrators of the estate of Mbithi Kaluli who was a shareholder at the defendant company. The plaintiff took possession of the suit property upon purchase and started constructing a residential house.

3. The house which was being constructed by the plaintiff was first brought down after three courses. The plaintiff started afresh and when the house had almost reached the lintel, it was again brought down. He again started all over again. This time, the house went on to a stage where he had started roofing. It was again pulled down. When he enquired from the company why this was happening the defendant's officials verbally assured him that the suit property was his and that he was free to construct. He could however not take their word as he knew that this is normally what the company does when they want to take away other people's properties.

4. I have gone through the documents produced by the Plaintiff. There is a share certificate confirming that Mbithi Kaluli was a shareholder of the defendant company. He had been allocated plot M 449 which is the suit property herein. When the said Mbithi Kaluli died, his wife was appointed one of his administrators of the Estate. The wife of the deceased entered into a sale agreement with the plaintiff for the purchase of the suit property.

5. The Plaintiff produced photographs of the house he was putting up in its various stages. The photographs show a house which had reached roofing stage but was brought down. The plaintiff's evidence is not controverted. The Plaintiff had indicated in prayer (IV) of the plaint that he was to provide particulars of loss which he suffered as a result of the destruction of his house. He did not provide the particulars. There is therefore no basis for grant of the damages which were not pleaded or their evidence given. I nevertheless find that he has proved the rest of the prayers on a balance of probability. I therefore enter judgement for the plaintiff against the defendant in the following terms:-

i. A declaration is given that the plaintiff is the lawful owner of plot No.M 449.

ii. An injunction is hereby issued against the defendant, its agents, servants, and or employees from trespassing into, damaging, or destroying developments on plot No. M 449 at Ruai.

iii. The defendant is hereby ordered to execute lease documents for plot M 449 in favour of the plaintiff.

iv. The costs of this suit shall be borne by the defendant .

Dated, Signed and delivered at **Nairobi** on this 3rd day of **May 2018**.

E.O.OBAGA

JUDGE

In the presence of :-

Mr Ogwe for Mr Onyango for Plaintiff

Court Assistant: Hilda

E.O.OBAGA

JUDGE