



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 460 OF 2017

CHARLES STEVEN MBINDYOPLAINTIFF

VERSUS

JUSTUS WAINAINA NJUGUNA.....1ST DEFENDANT

CHIEF LAND REGISTRAR2ND DEFENDANT

HON. ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

1. In the Plaintiff, the Plaintiff averred that he is the registered proprietor of land registered as L.R. No. 9917/4 measuring 4,224 Ha situate in Konza area, Machakos (*the suit property*); that the Plaintiff purchased the said land from Lands Limited, a subsidiary of Agricultural Development Corporation in 1989 and that the land was transferred to the Plaintiff on 4th July, 1989.

2. The Plaintiff averred that he has been in occupation of the suit land for over 26 years until the year 2015 when unknown persons invaded the suit land and purported to take possession; that he reported the issue of the invasion of the suit land to the Directorate of Criminal Investigations, who found out that the 1st Defendant had attempted to secure registration of fraudulent sub-divisions over the suit property, being L.R. No. 9917/5-13 and that the 1st Defendant has constantly continued to interfere with the Plaintiff's quiet possession and ownership of the said land by claiming ownership of the same.

3. The Plaintiff has sought for a declaration that the suit property belongs to him; a permanent injunction to restrain the 1st Defendant from sub-dividing, alienating or in any manner dealing with the suit property and for general damages for unlawful and wrongful sub-division and sale of the suit property.

4. Although the 1st Defendant's advocate filed a Notice of Appointment of Advocates dated 22nd January, 2018 on 23rd January, 2018, he neither filed a Memorandum of Appearance nor a Defence. The suit therefore proceeded as undefended.

5. The Plaintiff's wife, PW1, informed the court that she has been duly authorized by the Plaintiff, who is sick, to plead and testify on his behalf. According to DW1, the Plaintiff is the registered owner of land known as L.R. No. 9917/4 measuring 4,224 Ha situate in Konza area, within Machakos County (*the suit property*).

6. It was the evidence of PW1 that the Plaintiff purchased the suit property from Agricultural Development Corporation in 1989 and the same was transferred to him on 4th July, 1989 and that the Plaintiff has constructed his rural home on the suit property and practices mixed farming on the land, including rearing of goats, sheep and cows.

7. PW1 informed the court that on 31st September, 2015, some strangers drove into the suit property and informed one of her employees that they were claiming the land belongs to them and that she reported the matter to the Directorate of Criminal Investigations who upon investigations, found that the 1st Defendant had attempted to fraudulently sub-divide the suit property into L.R. No. 9917/5-13.

8. PW1 stated that the 1st Defendant was charged for forgery of a document of title to land contrary to Section 350(1) of the Penal Code; that the 1st Defendant has constantly continued to interfere with the Plaintiff's quiet possession and ownership of the suit property by claiming ownership of the same and that the 1st Defendant has been offering the suit land to third parties.

9. PW1 produced in evidence the Power of Attorney dated 30th June, 2015 and registered on 21st July, 2015. PW1 also produced in evidence

the Certificate of Title for L.R. No. 9917/4; the Transfer document from Lands Limited to the Plaintiff registered on 4th July, 1989 as I.R. 24015/3 and the charge sheet.

10. In his submissions, the Plaintiff's advocate submitted that the Plaintiff is the *bona fide* and legally registered owner of the suit property; that the Plaintiff's title has not been challenged and that the 1st Defendant invaded the suit land and purported to take possession of the same. Counsel relied on numerous authorities which I have considered.

11. The Plaintiff's claim is that he bought land known as L.R. No. 9917/4 registered as I.R. 47655 measuring 4,224.0 hectares situate in Konza, Machakos County (*the suit property*) from Lands Limited, a subsidiary of Agricultural Development Corporation on 4th July, 1989.

12. PW1 produced in evidence the Transfer document showing the said purchase. According to the Transfer document, the Plaintiff purchased the suit property for Kshs. 6,567,500 and had the land registered in his favour on 4th July, 1989.

13. PW1 also produced in evidence the Certificate of Title which was issued to the Plaintiff under the Registration of Titles Act (*repealed*). Section 23(1) of the Registration of Titles Act (*repealed*) provides as follows:

“(1) The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”

14. The Defendants did not file a Defence rebutting the Plaintiff's assertion that the suit property is registered in his favour. Indeed, no evidence was tendered to show that the Certificate of Title for L.R. No. 9917/4 in the name of the Plaintiff was fraudulently acquired.

15. Other than his legal right to own the land, the proprietor of land has other incidental rights to land, including the right to possess, the right to use, the right to manage, the right to the income, the right to the capital, the right to security, the right to transmissibility, the prohibition of harmful use and liability to execution (*See Honore 11 incidents of ownership*). That being so, the Plaintiff, and his family are entitled to the peaceful and quiet enjoyment of the suit property in all its manifestations.

16. For those reasons, I find that the Plaintiff has proved his case on a balance of probability. The Plaintiff's Plaint dated 20th November, 2017 is allowed as follows:

a. A declaration be and is hereby issued that the conduct of the 1st Defendant whether by himself, his agents, employees or whosoever in seizure, repossession and intimated sale and/or sub-division of L.R. No. 9917/4 belonging to the Plaintiff without colour of right smacks of impropriety and the same is unlawful, wrongful and arbitrary.

b. A declaration be and is hereby issued that the Plaintiff is the bona fide and registered owner of the suit property and is therefore entitled to uninterrupted use and occupation thereof of property number L.R. No. 9917/4 registered as I.R. 47655.

c. A permanent injunction be and is hereby issued restraining the 1st Defendant whether acting by himself, his agents, auctioneers, officers, servants, employees and/or whosoever from selling, seizing, sub-dividing, disposing, alienating or in any other manner dealing with the properties of the Plaintiff.

d. The 1st Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 15TH DAY OF MAY, 2020.

O.A. ANGOTE

JUDGE