



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

ENVIRONMENT & LAND COURT

LAND CASE NO.116 OF 2013

JACKTON ELLY OMIA LWANDE.....PLAINITFF

VERSUS

JOSEPH ONOKA OGADA.....DEFENDANT

J U D G M E N T

1. **Jackton Elly Omia Lwande**, the Plaintiff, commenced this claim through the plaint dated 15th May 2013 against **Joseph Onoka Ogada**, the Defendant seeking for a declaration that the Defendant is a trespasser on land parcel **Kisumu/Marera/1570** and should therefore give vacant possession, general damages for trespass, eviction order against the Defendant and Costs. The plaintiff avers that he is he registered proprietor of the said land and that the Defendant entered onto the said land, erected structures and started using it without the plaintiff authority and that he has declined to vacate after being asked to do so.

2. The Defendant was served with the suit papers on 4th June 2013 as confirmed f by the process server in the affidavit of service sworn on 4th June 2013. The Defendant did not enter appearance or file defence. The plaintiff requested for judgment through the letter dated 24th June 2013 and the same was entered by the Deputy Registrar on 25th June 2013. The matter was then fixed for formal poof.

3. During the hearing on 6th October 2015, the Plaintiff testified as PW1. The plaintiff produced a copy of the certificate of official search, green card/ register and title deed for land parcel **Kisumu/Marera/1570** showing that he became the registered proprietor of the said land on 18th March 2013. He further produced copies of letters done by the chief to the Defendant to the effect that the Defendant was the vacate from land on 2nd August 2010 but had declined to do so.

4. The following are the issues for determination.

- a) Whether the plaintiff is the registered proprietor of the suit land.
- b) Whether the Defendant has taken possession of the suit land and if so when.
- c) Whether the plaintiff is entitled to any of the prayers sought.

5. **ANALYSIS OF THE EVIDENCE**

- a) That from the documentary evidence availed by the plaintiff, especially the copy of the register, land parcel **Kisumu/Marera/1570** was first registered on 22nd March 1974 in the

names of **Jecton Omiya**. The land was later registered in the names of the Plaintiff on 15th March 2013. This is confirmed by the copy of the title deed and certificate of official search.

b) That from the oral testimony offered by the plaintiff when he testified as PW1, the Defendant entered onto the suit land in February 2010, erected a house and has been using it since then. Though the Plaintiff claims that the Defendant did not seek his consent or authority to occupy the land, the documentary evidence referred to above clearly shows that the Plaintiff was not the registered owner of the land until the year 2013. The court therefore fails to understand how the Plaintiff expected the Defendant to seek for his consent when he was not the legal owner of the land at the time of entry, February 2010.

c) That though the Defendant did not defend this claim and considering **Jecton Omiya** is not a party of these proceedings and further that he was not availed as a witness, the court finds no basis to agree with the Plaintiff that the Defendant was obligated to seek for his consent before he occupied the land in February 2010. The person the Defendant should have sought consent from, if any, was **Jecton Omiya** who was then registered as proprietor.

d) That in absence of the plaintiff presenting evidence to show that he had a legally recognised authority or interest over the suit land in February 2010 before he became the registered proprietor on 18th March 2013, the court can only conclude that the Defendant was already on the land by the time the Plaintiff became the registered proprietor of that suit land. That from that date of 18th March 2013, the plaintiff was entitled to the rights and benefits of a registered proprietor under **Section 24 and 25 of the Land Registered Act No.3 of 2012**. The plaintiff title to the land is absolute and indefeasible and can only be challenged in accordance with **Section 26 of the Land Registration Act**. There has been no such challenge and the Plaintiff is therefore entitled to have the Defendant, who has remained on the land without the Plaintiff consent and has not come to court to defend his right to remain there, evicted. In the circumstances of this case the court find that the plaintiff has not laid the basis for damages and none will therefore be granted.

6. That as shown above, the court finds that the Plaintiff has established his claim against the Defendant, on a balance of probabilities. The court enters judgment for the plaintiff against the Defendant as follows:

a) That a declaration is hereby issued that the Defendant is a trespasser on land parcel **Kisumu/Marera/1570** and should give vacant possession in sixty (60) days after this order is served upon him.

b) That in case the Defendant fails to give the plaintiff vacant possession of land parcel **Kisumu Marera/1570** sixty (60) days, eviction orders to issue forthwith.

c) That the Defendant do pay the plaintiff costs of this suit.

It is so ordered.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

Dated and delivered at Kisumu this **02nd day of March 2016**

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr Ayaya for Amondi for Plaintiff.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

2/3/2016

2/3/2016

S.M. Kibunja J

Oyugi court assistant

Mr Ayaya for Amodi for plaintiff

Court: Judgment delivered in open court in presence of Mr Aya for Amondi for plaintiff.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

2/3/2016