



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KISII

CAUSE NO. 218 OF 2011

WILLIAM MIRERI NYANGIGA PLAINTIFF

VERSUS

SILFANUS NGIELADEFENDANT

JUDGMENT

1. The plaintiff brought the instant suit against the defendant by way of a plaint dated 10th October 2011 and filed in court on the same day. The plaintiff claims that on or about 15th day of December 2008 he entered into an agreement for the purchase of land with one Enos Adhanja Omboga (as vendor) whereby the vendor sold and transferred to the plaintiff land parcel **LR No. Central Kasipul/Kamuma/1793** (hereinafter referred to as “the suit land”). The plaintiff states that the suit land measuring approximately 0.60Hectares was transferred to him on 6th May 2009 and the same remains registered in his name to date.

2. The plaintiff avers that on or about September 2011 the defendant unlawfully entered onto the suit property and erected a temporary structure on a portion of the land and that inspite of the plaintiff notifying her that she is in trespass and she should cease the trespass and vacate and yield vacant possession of the land the defendant has failed, refused and/or neglected to oblige rendering the institution of these proceedings necessary.

3. The plaintiff by the plaint interalia seeks the following orders:-

- i. A declaration that he is the lawful registered owner of the suit property;**
- ii. An order of eviction of the defendant from the suit property.**
- iii. A permanent injunction against the defendant restraining her from trespassing onto the suit land;**
- iv. General damages for trespass.**

The plaint was filed simultaneously with an application for an interlocutory injunction against the defendant. The defendant though served with the interlocutory notice of motion did not appear or respond to the application and the court on 27th October 2011 granted the interlocutory orders of injunction against the defendant.

4. The defendant though served with summons to enter appearance in these proceedings did not appear and/or file any defence. The matter was listed before me for hearing on 28th April 2016 and inspite of the

defendant being served with a hearing notice for the day he did not attend court and the hearing proceeded ex parte.

5. The plaintiff William Mireri Nyangiga testified as PW1 and was the only witness who testified in support of the plaintiff's claim. He testified that on or about 15th December 2008 pursuant to an agreement he purchased from one Enos Adhanja Omboga land parcel number **Central Kasipul/Kamuma/1793** measuring 0.60hectares or thereabouts. The witness testified further that before purchasing the land he carried out a due diligence including carrying out a search at the lands office. He stated that he verified the vendor had purchased the land from one Cornel Ndolo Ngiela to whom the suit land had been transferred on 10th April 1990. The search the plaintiff carried out prior to purchasing the property confirmed the suit property was registered in the name of Enos Adhanja Omboga. The agreement between the plaintiff and the said Enos Adhanja Omboga was made and/or witnessed before the Assistant Chief Kamuma sublocation.

6. The plaintiff stated that at the time he purchased the property the vendor had constructed 2 houses on the land which were left vacant after the vendor transferred the land to the plaintiff and vacated the land. The plaintiff testified that the defendant was not on the land at the time of the purchase. The plaintiff further testified that after signing the agreement with the vendor they attended the land control board and consent for the sale transaction was granted on 5th May 2009 and the suit property was transferred to the plaintiff and a title issued in his name on 6th May 2009 as per the original copy of the title produced in court during the hearing (original returned to the plaintiff). A copy of the certificate of search dated 9th September 2011 produced in court by the plaintiff affirmed that he was indeed the registered owner of the suit property. The plaintiff produced as plaintiff's exhibits the documents listed in the plaintiff's bundle of documents dated 10th October 2011 and the same were admitted as PEx1 – 10 as numbered.

7. It was the plaintiff's further evidence that the defendant unlawfully entered into the suit land sometimes in September 2011 and constructed a temporary structure thereon. The plaintiff reported the matter to the assistant chief who the plaintiff stated advised him to seek the assistance of the court. The plaintiff states that when he asked the defendant to vacate, the defendant claimed that it is his father who told him to come to the land. The plaintiff stated that the defendant's father is one Joseph Ngiela Ndolo who was infact a witness of the original vendor of the parcel of land one Cornel Ndolo Ngiela when the land was sold to Enos Adhanja Omboga from whom the plaintiff purchased the land.

8. I have considered the pleadings, the evidence adduced by the plaintiff in support of his case together with all the documents tendered as exhibits in the case. The evidence establishes without doubt that the plaintiff is the registered owner of the suit property after purchasing the same from the previous owner, Enos Adhanja Omboga. The evidence establishes due process was followed. There was an agreement of sale, the consent of the land control board was duly obtained and the property was transferred to the plaintiff resulting with the plaintiff being issued with the title deed dated 6th May 2009. The certificate of official search dated 9th September 2011 confirms that the plaintiff was registered as owner of title number **Central Kasipul/Kamuma/1793** and therefore in terms of Sections 24, 25 and 26 of the Land Registration Act, 2012 his ownership is absolute and indefeasible and can only be challenged as provided under Section 26 (1) (a) and (b) of the Land Registration Act, 2012 on grounds of misrepresentation or fraud to which the registered owner is shown to have been a party to and if it is proved the title was procured irregularly and/or unprocedurally. There has been no such challenge to the plaintiff's title.

9. The defendant did not appear and/or file any defence with the result that the plaintiff's evidence was uncontroverted. The plaintiff's evidence was well supported by the documents tendered in evidence and I therefore accept and find the same to be credible. In the premises, I find and hold that the plaintiff has proved his case on a balance of probabilities. As the registered owner of the suit premises, the plaintiff has absolute rights of ownership and is entitled to have exclusive use. On the basis of the evidence it is my holding and finding that the defendant is in trespass and has no right to be on the plaintiff's land. He should vacate from the plaintiff's land.

10. The net result is that I enter judgment in favour of the plaintiff on the following terms:-

1. The plaintiff be and is hereby declared to be the registered and/or lawful owner of land parcel Central Kasipul/Kamuma/1793.

2. The defendant be and is hereby ordered to vacate land parcel Central Kasipul/Kamuma/1793 within sixty (60) from the date of service of this judgment and decree upon him failing which an order of his forcible eviction to issue on application.

3. A permanent injunction be and is hereby issued restraining the defendant by himself, agents, servants and/or anyone claiming under him from re-entering, trespassing onto, cultivating, building structures, interfering with and/or in any other manner whatsoever dealing with the suit property land parcel number Central Kasipul/Kamuma/1793.

4. The costs of the suit are awarded to the plaintiff.

Judgment dated, signed and delivered at Kisii this 1st day of July, 2016.

J. M. MUTUNGI

JUDGE

In the presence of:

..... for the plaintiff
..... for the defendant
..... for the Court Assistant

J. M. MUTUNGI

JUDGE