



REPUBLIC OF KENYA

High Court at Kitale

Civil Suit 81 of 2012

HELEN NASAMBU WANYONYI ::: PLAINTIFF.

VERSUS

WILBERFORCE AMBWERE ::: DEFENDANT.

J U D G M E N T .

The plaintiff Hellen Nasambu Wanyonyi brought this suit against the defendant Wilberforce Ambwere praying for a declaration that she is entitled to exclusive use and occupation of L.R. No. Kwanza/Namanjalala Block 5/175. She also prayed for an eviction order and permanent injunction restraining the defendant or any other persons from trespassing or in any way dealing with the suit land. She at the same time prayed for general damages for trespass and costs of the suit. The defendant who was duly served neither entered appearance nor filed defence. The plaintiff therefore obtained interlocutory judgment against him and the case proceeded by way of formal proof.

During the hearing the plaintiff testified that she bought the suit land from Trans Nzoia Investment Company Ltd and was duly issued with share certificate No. 7045 on 30/6/1992. She produced the share certificate as exhibit 1. She took possession of the land for which she was thereafter issued with a title deed produced as exhibit 2. In February, 2012 the defendant invaded her land and constructed a house thereon and started ploughing the land which he continues to do to date. This is why she has come to court seeking the prayers set out hereinabove in this judgment.

I have gone through the pleadings. The plaintiff's evidence remains uncontroverted. She has proved by evidence that she bought the land from Trans Nzoia Investments Ltd and was issued share certificate on 30/6/1992. She has further proved that subsequent to this, she had her land registered in her name and title thereof issued to her on 10/10/2011. Section 26 (1) of the Land Registration Act No. 3 of 2012 provides as follows:-

“The certificate of title issued by the Registrar upon

Registration or to a purchaser of land upon transfer

or transmission by a proprietor shall be taken by all

courts as prima facie evidence that the person named

as proprietor of the land is the absolute and indefeasible

owner subject to the incumberances, easements,

restrictions and conditions endorsed thereon.”

In the present case there was no evidence adduced to show whether there are any restrictions or endorsements on the title. I will therefore take it that it is the plaintiff who is the registered owner of the land and that neither restrictions nor conditions have been entered against the title. The question which then arises is as to whether the plaintiff has established her case on a balance of probabilities. The answer to this is that the plaintiff has proved her case on a balance of probabilities. She has proved that she has title to the land. It therefore follows that she is entitled to the exclusive use of the same. The defendant is a trespasser on to the land. The plaintiff is entitled to protection by the law. Though in her pleadings she has pleaded that the defendant invaded her land in May, 2012, in her evidence she testified that the invasion took place in February, 2012. This does not however affect her claim. The plaintiff did not come out clearly as to what the defendant is doing on the land save for saying that he has erected a structure on the land and has ploughed. I therefore do not have any basis upon which I can award general damages on trespass. I find that the plaintiff is the sole proprietor of land known as L.R. No. Kwanza/Namanjalala Block 5/175. The defendant should be evicted from the land forthwith and a permanent injunction is hereby issued restraining the defendant or any other persons from interfering and or dealing in any manner with the suit land. The plaintiff shall have costs of the suit.

[Dated, signed and delivered at Kitale on this 7th day of March, 2013.]

E. OBAGA.

JUDGE.

[In the presence of Mr. Waweru for plaintiff, Court Clerk – Joan.]

E. OBAGA.

JUDGE.