



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ELC NO. 162 OF 2010
BURUBURU FARMERS COMPANY
LTD.....PLAINTIFF

V E R S U S

JOSEPH KIONGO.....1ST
DEFENDANT

JOSEPH KIBIRU.....2ND
DEFENDANT

DAUDI WAITITU.....3RD
DEFENDANT

R U L I N G

There is a Certificate of Lease (“WN1”) dated 16th March 2010 showing that the Plaintiff is the registered proprietor of the suit land, that is Nairobi/Block 102/573. The registration is under the Registered Land Act (Cap. 300) whose sections 27 and 28 confer *prima facie* absolute and indefeasible claim to the land.

The Plaintiff claimed that the Defendants have either by themselves or their agents and without any colour of right or authority trespassed on the land, purported to subdivide it and to dump materials thereon with the intention of constructing thereon. In the affidavit sworn by Waweru Nginya, chairman of the Plaintiff company, it was alleged that the Defendants are calling themselves “Mungiki” and are subdividing the land to give it to members of “Kenya Youth Alliance”.

The 3rd Defendant swore a replying affidavit, on authority of the 1st and 2nd Defendants, to say that the Plaintiff’s Certificate of Lease was fraudulently obtained as they (the Defendants) have lived on the suit land for over 15 years. He stated that the land was originally allocated to Kenya Power & Lightning Company who subsequently donated it to Buruburu Youth Self-Help Group in which the Defendants are members. He further stated that the Group is a community self-help group with a Certificate of Registration and that the Kenya Power & Lighting Company has written to the Plaintiff making a claim to the land. “DW1” was annexed to show the Group had written to the City Council of Nairobi on 8th January 2010 to request that the land be allocated to it. The 3rd Defendant was saying he was the secretary

of the Group.

On 27th May 2010 Stanley Macharia swore an affidavit saying he was the Chairman of the Group and disowned the 3rd Defendant by denying that he (the Defendant) has ever been a secretary of the Group or that he had authority to swear the replying affidavit or to talk on their behalf. He swore that the Group had no interest in the suit land and that none of its members had trespassed or entered thereon. He stated that:-

“9. *THAT the said Daudi Waititu interest in the said land parcel is in his personal capacity and not as a representative of the Group.*”

Waweru Nginya swore a further affidavit to say that he has lived on the suit land for over 40 years and knows for a fact that the Defendants came to the land only recently. He denied that Kenya Power & Lighting Company ever owned the land or allocated it to the Defendants. Further, that the land is private property over which the City Council of Nairobi has no powers. He gave the history of the suit land to show that it was a subdivision of Nairobi/Block 102 which also belonged to the Plaintiff since 1970.

It is material that the 3rd Defendant did not swear another affidavit to respond to the averments of Stanley Macharia or Waweru Nginya. The City Council of Nairobi or the Kenya Power & Lighting Company have not sworn any affidavit to support the claims of the Defendant.

On the material available at this stage of the case, the Plaintiff has demonstrated that it is the registered proprietor of the suit land and it is also evident that the Defendants have no legal or beneficial claim to the land. Their bid to say that they are on the land as members of the Youth Group has been discounted by its Chairman who states that the Group has no claim to the land, nor has it asked its members to trespass on the same. The allegation that the Defendants are adverse possessors of the suit land has not, at this stage, been demonstrated.

An owner of land is entitled to possess, occupy and use the same to the exclusion of all other persons. This is the right that the Plaintiff says has been infringed by the Defendants. On basis of the principles in **Giella –Vs- Cassman Brown & Co. Ltd, [1973] EA 358**, I allow the application by the Plaintiff in terms of prayers 2, 3 and 4.

DATED AND DELIVERED AT NAIROBI THIS 1ST DAY OF MARCH 2011

A. O. MUCHELULE

J U D G E