



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 130 OF 2015

PASHA ENTERPRISES LTD.....PLAINTIFF

VERSUS

KENYA FARMERS ASSOCIATION LIMITED....1ST DEFENDANT

JANE ITEMBE.....2ND DEFENDANT

JUDGMENT

1. In his Complaint dated 27th April, 2015, the Plaintiff averred that on 13th October, 2009, in a public auction conducted by Airways Auctioneer in execution of a Decree in HCCC No. 560 of 1998, it purchased land parcel number Machakos Town Block 1/67 and 68; that he paid for the said plots and that the titles in respect to the two plots were transferred in his favour.
2. It is the Plaintiff's case that it is legally entitled to vacant possession of the suit land being Machakos Town Block 1/67.
3. In their joint Defence dated 4th June, 2015, the Defendants averred that the 1st Defendant has never owned the suit land; that the purported sale of the suit land at a public auction was null and void; that the suit land has always been owned by the County Government of Machakos and that the suit properties have never been available for attachment as claimed by the Plaintiff.
4. The Defendants averred that it the 1st Defendant which has always been in lawful occupation of the suit premises as lawful licensees of the County Government of Machakos; that the suit is time barred and that the suit is bad in law for non-joinder of the County Government of Machakos.
5. The matter proceeded for hearing on 17th July, 2018 in the absence of the Defendants and their advocate. The Plaintiff's Director, PW1, informed the court that the Plaintiff purchased parcel of land number Machakos Town Block 1/67 and Machakos Town block 1/68 in a public auction for Kshs. 9,300,000; that the said auction was pursuant to the orders that were issued by the court in Nakuru HCCC No. 560 of 1998 (*Kepha Nyabera & 189 others vs. Kenya Farmers Association Limited*) and that the Plaintiff obtained the Memorandum of Sale from the auctioneers after the said purchase.
6. It was the evidence of PW1 that after the said purchase, they received the consent for the transfer of the suit land from the then Municipal Council of Machakos to transfer the suit land to the Plaintiff; that the Plaintiff has since been registered as the proprietor of the suit land and that the Plaintiff is entitled to vacant possession.
7. The Plaintiff produced in evidence the Decree in Nakuru HCC No. 560 of 1998; the Notification of Sale for parcel of land known as Machakos Town Block 1/67 and 68 and the Memorandum of Sale by Airways Auctioneers. In addition to the said documents, the Plaintiff also produced in evidence the consent to transfer title numbers Machakos Town Block 1/67 and 68 by the then Municipal Council of Machakos together with the Certificate of Lease dated 1st March, 2013.
8. It was the evidence of PW1 that he has never taken possession of the suit land since the year 2013 when the suit land was transferred in favour of the Plaintiff. According to PW1, he is entitled to *mesne* profits for the land for the period that the 1st Defendant has occupied it.
9. The Plaintiff's advocate submitted that Article 40 of the Constitution protects the right to Acquire and own property; that the registration of a person as the proprietor of a Lease vests in that person the Leasehold interest described in the Lease and that the Plaintiff purchased the suit land through a public auction.
10. The Plaintiff's advocate finally submitted that the legitimacy of the Plaintiff's title number Machakos Town Block 1/67 has not been challenged and that the Plaintiff's claim should be allowed.

11. The evidence before me shows that Kepha Nyabera & 189 others sued the 1st Defendant in Nakuru HCCC No. 560 of 1998. In the said suit, the 1st Defendant herein was ordered to pay to the Plaintiff Kshs. 21,165,818. The Decree in Nakuru HCCC No. 560 of 1998 was produced by the Plaintiff in evidence.

12. The Plaintiff also produced in evidence an advertisement for sale of parcels number Machakos Town Block 1/67 and 68 to partially satisfy the Decree in Nakuru HCCC No. 560 of 1998 and the Notification of Sale dated 9th June, 2009.

13. It is on the basis of the Decree and the Notification of Sale that the Plaintiff entered into a Memorandum of Sale in respect of the two suit properties on 13th October, 2009. According to the Memorandum of Sale, the Plaintiff purchased the suit properties at a public auction for Kshs. 9,300,000.

14. The Plaintiff also produced in evidence the Certificate of Sale by Airways Auctioneers confirming the purchase of the two properties for Kshs. 9,300,000 and an order of the court in Nakuru HCCC No. 560 of 1998. In the said order, the court vested in the Plaintiff herein the suit properties absolutely. The Municipal Council of Machakos consented to the sale of the suit properties whereafter the land was transferred to the Plaintiff.

15. The Plaintiff produced in evidence the letter by the Director of Surveys dated 25th January, 2011 showing the amalgamation of parcels of land number 67 with 68. The Plaintiff also produced a Certificate of Lease showing that parcel number 67 was registered in its favour on 1st March, 2013.

16. The Defendants did not controvert the evidence of the Plaintiff. Indeed, no evidence was placed before the court to show that the orders that were made in Nakuru HCCC No. 560 of 1998 which authorized the sale of the suit properties by way of public auction have been set aside. In the circumstances, and considering that the suit land has since been registered in favour of the Plaintiff, the Plaintiff is entitled to vacant possession of the same.

17. For the reasons I have given above, I find and hold that the Plaintiff has proved its case on a balance of probabilities. I therefore allow the Plaintiff's claim dated 27th April, 2015 as follows:

a. The Plaintiff is hereby granted vacant possession of a parcel of land known as Machakos Town Block 1/67.

b. An order of eviction is hereby granted as against the Defendants, their servants and or agents from a parcel of land known as Machakos Town Block 1/67.

c. A permanent injunction be and is hereby issued restraining the Defendants whether by themselves, their servants and or agents or others whomsoever from continuing with the occupation and use of parcel number Machakos Town Block 1/67 or in any other manner howsoever from interfering with the Plaintiff's peaceful possession of the suit land.

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

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31ST DAY OF JANUARY, 2019.

O.A. ANGOTE

JUDGE