



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 364 OF 2012

NG'ANG'A WAINAINA.....PLAINTIFF

VERSUS

HAMISI BWANA.....1ST DEFENDANT

MUTUA KASYUMA.....2ND DEFENDANT

PETER MAINGL.....3RD DEFENDANT

MUSANDI WAMBUA.....4TH DEFENDANT

JUDGMENT

1. In the Complaint dated 28th September, 2012, the Plaintiff averred that he is the registered proprietor of a parcel of land known as Ndalani/Ndalani Block 1/1618 measuring 4.92 Ha (*the suit land*); that in the year 2011, the Defendants entered upon the suit land and built temporary structures thereon and that the Defendants should be evicted from the suit land.

2. The Defendants filed a Defence through the firm of J.T. Nzioki and Co. Advocates in which they averred that they settled on the suit land twenty (20) years ago and that it is the Plaintiff who started interfering with their peacefully occupation of the land in the year 2012.

3. Although the Defendants' advocates were served with the hearing notice for 17th May, 2018, they did not turn up when the matter came up for hearing . The hearing proceeded on the said date in their absence.

4. In his evidence, the Plaintiff, PW1, informed the court that before being issued with a Title Deed to the suit land, the Defendants had trespassed on the suit land and constructed illegal structures thereon; that despite seeking the intervention of the District Officer, the Defendants have refused to vacate the suit land and that his claim should be allowed.

5. The Plaintiff produced in evidence the Title Deed for Ndalani/Ndalani Block 1/1618. The said Title Deed shows that the Plaintiff became the registered owner of the land on 19th January, 2012.

6. As correctly submitted by the Plaintiff's advocate, under Section 26 of the Land Registration Act, a Certificate of Title issued by the Registrar 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. Such a title can only be defeated on the ground of fraud or misrepresentation, or where the Certificate of Title has been acquired illegally, unprocedurally or through a corrupt scheme.

7. In light of the above provision of the law, the Plaintiff is entitled, by virtue of being the registered proprietor of the suit land, to the use of the said land. The Defendants did not call any evidence to show that they have been in use and occupation of the suit land for more than twelve (12) years or that the Plaintiff's suit is time barred.

8. For those reasons, I allow the Plaintiff's Complaint dated 28th September, 2012 as follows:

a. A declaration that the Defendants herein are trespassers on parcel of land known as Ndalani/Ndalani Block 1/1618.

b. An order be and is hereby issued that the Defendants, their family members or any one purporting to derive right of entry or re-entry from them be evicted from all that parcel of land known as Title No. Ndalani/Ndalani Block 1/1618 with the supervision of, and/or enforcement by, the Officer Commanding Station, Yatta Police Station.

c. A permanent injunction be and is hereby issued restraining the Defendants, by themselves, their servants, agents, family members or any one purporting to derive right of entry or re-entry from them or otherwise howsoever from entering, encroaching upon, cultivating, cutting down trees, selling, transferring, alienating, disposing, developing, committing any acts of waste or in any other way whatsoever interfering with the land comprised in Title No. Ndalani/Ndalani Block 1/1618.

d. Costs of the suit to be paid by the Defendants.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 18TH DAY OF JANUARY, 2019.

O.A. ANGOTE

JUDGE