



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 612 OF 2016

ELKANA SALAMBA

JOSHUA KIMKEI

JOTHAM MATIVA (Suing as trustees of

PENTECOSTAL ASSEMBLIES OF GOD).....PLAINTIFFS

VERSUS

1. ALLAN MISIGO

2. KEN KEYA

3. GEOFFREY RODENYO.....DEFENDANTS

JUDGMENT

The plaintiffs brought this suit against the defendants on 8th June, 2016 through a plaint of the same date seeking among other reliefs, an injunction restraining the defendants from entering upon or trespassing, constructing or continuing with construction of any structures, offering for sale, selling, disposing of, charging, sub-dividing, dealing with, alienating, occupying, leasing, or otherwise using, residing or remaining on and or interfering in any manner howsoever with all that parcel of land known as LR. No. 23240(I.R No.124997) (hereinafter referred to as “the suit property”). The plaintiffs averred that that they were the registered proprietors of the suit property and that on 28th May, 2016, the defendants without any lawful excuse entered the suit property and occupied a portion thereof on which they started putting up temporary structures. The plaintiffs averred that they approached the defendants and inquired from them on whose authority they had entered the suit property but the defendants became violent and chased them away. The plaintiffs averred that they tried to have the dispute resolved through the area chief but the chief was unable to convince the defendants to vacate the suit property thereby leaving them with no alternative but to file this suit.

The defendants entered appearance and filed a statement of defence on 4th July, 2016. The defendants admitted that the plaintiffs were the registered proprietors of the suit property and that the plaintiffs had constructed on the property a church and a nursery school. The defendants denied however that they entered onto and occupied the suit property without the plaintiff’s permission on 28th May, 2016 or at all. The defendants denied that they had constructed temporary structures on the suit property or that they interfered with the plaintiff’s activities on the property as alleged or at all. The defendants contended that they were not occupying the suit property and as such they could not heed the plaintiffs’ demand that they vacate the same.

When the suit came up for hearing on 9th October, 2018, the defendants did not attend court. The defendants’ advocate sought adjournment which was denied by the court after which the said advocate did not participate in the hearing. The hearing of the matter proceeded in the absence of the defendants and their advocates notwithstanding. Rev. Charles Virungi (PW1) gave evidence on behalf of the plaintiffs. He told the court that he was the pastor of Pentecostal Assemblies of God(PAG) Church at Kangemi. He stated that the PAG church at Kangemi is situated on the suit property. He stated further that the suit property was allocated to the plaintiffs by the Government of Kenya on 19th December, 1997 and they were issued with a title in respect thereof on 23rd June, 2016. He stated that the suit property measured 1.012 hectares and that they had constructed a church, an office and a nursery school on the property. He stated that the defendants entered the suit property forcefully and put up structures thereon. He stated that the defendants interfered with the running of the nursery school on the suit property and also interfered with the farming activities that they were undertaking on the suit property particularly on the portion thereof occupied by the defendants. He stated that the defendants were still in occupation of the suit property. PW1 produced as exhibit the documents that were attached to the plaintiffs’ bundle of documents dated 3rd October, 2018 as exhibits. He urged the court to grant the reliefs sought in the plaint. After the close of the plaintiffs’ case, the plaintiffs’ advocate informed the court that he wished to rely entirely on the evidence on record.

I have considered the plaintiffs' claim against the defendants and the evidence that was tendered in proof thereof. The plaintiff's claim against the defendants is based on trespass. Trespass is any intrusion by a person on the land in the possession of another without any justifiable cause. What I need to determine is whether the plaintiffs have proved that they were the owners of the suit property and that the defendants entered and occupied the same without any justifiable cause. The plaintiffs demonstrated that they were the proprietors of the suit property. They produced in evidence copies of a letter of allotment dated 19th December, 1997 and Grant No. IR 124992 dated 23rd June, 2010 which were issued in their favour in respect of the suit property in proof of their ownership of the property.

Under section 24 of the Land Registration Act, 2012, the registration of the plaintiffs as proprietors of the suit property vested upon the plaintiffs absolute ownership thereof together with all rights and privileges associated therewith. Under section 25 of the said Act, the plaintiffs' rights over the suit property are indefeasible except as provided under the said Act. Section 25 (1) of the Land Registration Act, 2012 provides as follows:

(1) The rights of a proprietor whether acquired on first registration or subsequently for valuable consideration or by an order of court shall not be liable to be defeated except as provided in this Act and shall be held by the proprietor together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever but subject:

a. To the leases, charges and other encumbrances and to the conditions and restrictions if any shown in the register; and

b. To such liabilities rights and interests as affect the same and are declared by section 28 not to require noting on the register unless the contrary is expressed in the register.

The suit was defended but the defendants did not appear in court during the hearing. In their defence, the defendants did not contest the plaintiffs' title over the suit property. The defendants' contention was that they were not in occupation of the suit property. The defendants did not however place any evidence before the court showing that the parcel of land they were occupying was different from the suit property. The plaintiffs' contention that the defendants were occupying the suit property was therefore uncontroverted. The plaintiffs' contention that the defendants' entry and occupation of the suit property was forceful and without their consent or authority was also not challenged. The plaintiffs having proved their ownership of the suit property and the defendants' unauthorised entry and occupation thereof, the burden shifted to the defendants to justify their occupation of the property.

In the absence of any evidence from the defendants in their defence, the only conclusion the court can make is that the defendants had no justifiable cause for entering and occupying the suit property and as such they are trespassers thereon. For the foregoing reasons, I am satisfied that the plaintiffs have proved their claim against the defendants and that they are entitled to the reliefs sought in the plaint.

In conclusion, I hereby enter judgment for the plaintiffs against the defendants jointly and severally in terms of prayers (a) and (b) in the plaint dated 8th June, 2016. I decline to grant prayer (c) because no evidence was led in respect thereof. The plaintiff shall have the costs of the suit.

Delivered and Dated at Nairobi this 21st day of March 2019.

S. OKONG'O

JUDGE

Judgment read in open court in the presence of:

Mr. Wachira h/b for Mr. Mogire for the Plaintiffs

N/A for the Defendants

C. Nyokabi- Court Assistant