



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 265 OF 2016

JOHN MUTHEE NGUNJIRI.....PLAINTIFF

VERSUS

ALI IBRAHIM.....DEFENDANT

JUDGMENT

(Suit by plaintiff against the defendant seeking to have the defendant restrained from interfering with the plaintiff's parcel of land; plaintiff displaying documents of title; defendant not filing anything to dispute the plaintiff's claim; judgment entered for the plaintiff)

1. This suit was commenced through a plaint which was filed on 19 July 2016. In the plaint, the plaintiff has pleaded that he is the proprietor of the land parcel Gilgil/Gilgil Block 1/26307 (Kikopey) which land he has pleaded is undergoing subdivision into the land parcels Gilgil/Gilgil Block 1/31518 to 31538. He has averred that sometimes on 13 July 2016, the defendant without any lawful justification forced his livestock into his land claiming that he has rights over the same and even assaulted the plaintiff a matter that was reported at Nakuru Police Station. The plaintiff has pleaded that the defendant has again threatened to enter the said land. In this suit, the plaintiff wishes to have the defendant permanently restrained from the land alongside costs and interest.

2. Despite being served, the defendant did not enter appearance and neither did he defend this suit. He also did not appear in court at any one time.

3. In his evidence, the plaintiff more or less repeated the averments in the plaint and mentioned that he acquired the land parcel No. 26307 through purchase and he got title to it on 25 May 2015. He then proceeded to subdivide the land into 21 plots. On 13 July 2016, he went to place beacons on the land when the defendant obstructed him claiming that the land belongs to him. The plaintiff challenged him to avail title. The plaintiff then drove off but the defendant accosted him and threatened him never to go back to the land. The plaintiff reported this to the police but no action has so far been taken against the defendant.

4. As I earlier mentioned, the defendant did not file any defence and did not bring anything to controvert what the plaintiff has presented. I have no reason to doubt the evidence of the plaintiff. I have seen that he held title to the land parcel Gilgil/Gilgil Block 1/26307 and he also tabled the mutation form showing his intention to subdivide. He has in the course of time been able to obtain titles to some of the subdivisions. The titles held by the plaintiff are prima facie evidence that he is the registered proprietor thereof pursuant to the provisions of Section 26 of the Land Registration Act, 2012, which provides as follows :-

26. Certificate of title to be held as conclusive evidence of proprietorship
(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the 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 encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

5. The defendant has not come to court to demonstrate that he has any rights over the suit land or that the title of the plaintiff is subject of being impugned. That being the case, the plaintiff as owner, is the person who is vested with proprietary rights over the suit land including the rights of ingress and egress, and exclusive possession.

6. I therefore allow the plaintiff's suit and issue an order permanently restraining the defendant from the land parcel Gilgil/Gilgil Block 1/26307 and/or any of the subdivisions thereof being Gilgil/Gilgil Block 1/31518 to 31538 (Kekopey). The plaintiff shall also have the costs of this suit and interest at court rates.

7. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 7th day of March 2019.

JUSTICE MUNYAO SILA

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In Presence of : -

Ms. Amulabu holding brif for Mr. Geoffrey Otieno for the plaintiff.

No appearance for the defendant.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU