



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.349 OF 2014

BENARD NJOROGE KARIUKI.....PLAINTIFF

VERSUS

BIBIANA NDUHA KIARI.....1ST DEFENDANT

FLORENCE NYANGULA.....2ND DEFENDANT

STEPHEN WAMWEA.....3RD DEFENDANT

JARED MISIANY.....4TH DEFENDANT

ERASTUS LOPAR ENTEN.....5TH DEFENDANT

DANIEL NJOROGE.....6TH DEFENDANT

PHILLIP CHEGE.....7TH DEFENDANT

JOHN KINYANJUL.....8TH DEFENDANT

JAMES KABERAH MBUGUA.....9TH DEFENDANT

JOSEPH KABERAH MBUGUA.....10TH DEFENDANT

JOHN KIMANI GATHU.....11TH DEFENDANT

JUDGMENT

(Suit by plaintiff seeking orders of eviction and permanent injunction; plaintiff being owner of the suit properties and defendants encroaching into the same; no defence filed by the defendants; judgment entered for the plaintiff).

1. This suit was commenced through a plaint which was filed on 19 December 2014. The plaintiff pleaded that he is the registered owner of the land parcels Mau Summit/Molo Block 6/12, 13 and 17 (Muthondu) Farm having purchased them on 31 July 2014 from Agricultural Finance Corporation (AFC). On 6 November 2014, he wrote to the defendants to vacate the suit properties but they refused. In this case, he has asked for orders of eviction and permanent injunction against the defendants.

2. The 2nd, 3rd, 4th, 6th, 8th, 9th, and 11th defendants entered appearance through the law firm of M/S Nancy W. Njoroge & Company Advocates. No defence was however filed the information given being that the parties were negotiating. In the course of time, the suit against the 1st, 7th and 10th defendants was withdrawn with the explanation that they had vacated the suit properties. The law firm of M/s Nancy W. Njoroge & Company Advocates, then applied to cease acting citing lack of instructions and their application was allowed on 22 November 2017. The matter was then listed for hearing and the remaining defendants were served directly. They did not appear during the hearing of the case.

3. In his evidence, the plaintiff testified that he purchased the suit properties from AFC on 31 July 2014. The purchase price was paid and the suit properties transferred into his name. When he bought the land, there was no one on the land, but later, the defendants encroached on part

of it. He stated that he has asked them to leave in vain save for those who voluntarily left.

4. I have no reason not to allow the plaintiff's case. He has demonstrated that he is the registered owner of the suit properties. Being the person who is so registered, it is only him who is vested with proprietary rights over the suit land, including the right of use, ingress and egress. These rights are laid out in Section 24 of the Land Registration Act, Act No. 3 of 2012, which provides as follows :-

24. Interest conferred by registration
Subject to this Act—

(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

5. It will be seen from Section 24 (1) above, that it is the registered proprietor who is vested with absolute ownership of the land in issue, together with all rights and privileges belonging or appurtenant thereto. The defendants have not presented themselves before this court to demonstrate any right that they may have over the suit properties. That being the case, they have no right to be on the plaintiff's land, and have no right to be occupying it and making use of it without his consent.

6. For the above reasons, this suit must succeed. I allow it and make the following orders :-

(a) That I hereby order the defendants who have not already vacated the land parcels Mau Summit/Molo Block 6/12/ 13 and 17 (Muthondu Farm) to vacate the same within 14 days of service of this judgment and/or decree and if they do not do so, they be forcibly evicted.

b. That a permanent injunction is hereby issued against the defendants restraining them from entering, being upon, cultivating, utilizing, or in any other way interfering with the plaintiff's quiet possession of the land parcels Mau Summit/Molo Block 6/ 12, 13 and 17 (Muthondu Farm).

c. That the plaintiff shall have the costs of this suit as against the 2nd, 3rd, 4th, 5th, 6th, 8th, 9th, and 11th defendants. There shall be no orders as to costs for or against the 1st, 7th and 10th defendants who voluntarily vacated the suit properties.

7. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 9th day of April 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Ms. Wangari for the plaintiff.

No appearance for the defendants.

Court Assistant: Janepher Nelima /Kemboi

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU