



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. E087 OF 2023

JOSEPH MAINA.....
.....PLAINTIFF

=VERSUS=

EMBAKASI RANCHING COMPANY LIMITED.....
.....DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit vide a Plaint dated 19th September 2023 and amended on 22nd December 2023, seeking the following orders:-
 - a) ***A declaration that the Plaintiff is the legal and beneficial registered owner of the property known as NAIROBI/BLOCK 136/6615 located in Embaksai Ranch measuring 0.1296 ha.***
 - b) ***A permanent injunction restraining the Defendant whether acting by themselves, their servants, agents, contractors, proxies and/or any other persons howsoever from entering upon, trespassing upon, taking possession, remaining,***

damaging, developing, transferring, charging or registering in the name of a third party or any other person other than the Plaintiff or in any other manner howsoever interfering with the Plaintiff's occupation, possession and quiet enjoyment of the property known as NAIROBI/BLOCK 136/6615 measuring 0.1296 ha.

- c) The OCS Ruai police station to oversee compliance.***
- d) Costs of this suit.***
- e) Interest on d above.***
- f) Any other and further relief that this Honourable Court may deem fit and just to grant.***

2. Though duly served with Summons to Enter Appearance, the Defendant did not enter an Appearance or file a Defence.
3. The matter proceeded for hearing as an undefended suit.

PLAINTIFF'S CASE

4. The Plaintiff Joseph Maina testified as the sole witness in support of his case. He adopted his undated witness statement as his evidence in chief. He also produced the documents in his list, dated 19th September 2023, in support of his case.
5. The Plaintiff told the court that he is the registered proprietor of the suit property, having purchased it from Nimrod Nyamu Mathew for Kshs. 700,000/=
6. He testified that Nimrod Nyamu Mathew had purchased the suit property from the Defendant and was issued a share certificate No. 035270. He stated that on 16th August 2020,

they effected a change in beneficial ownership at the Defendant's offices.

7. He further testified that he was registered as the absolute owner of the suit property and issued a title on 17th May 2021. He went on to state that on 22nd August 2022, the police, acting under the Defendant's instructions, arrested and chased away his employees from the suit property. He insisted that the defendant has no right to trespass on the suit property.
8. In conclusion, he urged the court to grant the orders sought in the Plaint.

ANALYSIS AND DETERMINATION.

9. Although the suit was undefended, the Plaintiff has a duty to formally prove its case on a balance of probabilities as required by law.
10. In the case of **Kirugi and Another vs Kabiya & 3 others (1987) KLR 347**, the Court of Appeal held that;
“The burden was always on the Plaintiff to prove his case on a balance of probabilities, even if the case was heard as formal proof. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”
11. Similarly, in the case of **Gichinga Kibutha vs Caroline Nduku (2018) eKLR**, the Court held that:

“It is not automatic that, in instances where the evidence is not controverted, the Claimants shall have their way in Court. He must discharge the burden of proof. He must prove his case, however much the opponent has not made a presence in the contest.”

12. Having considered the pleadings and the evidence on record, the only issue for determination is whether the Plaintiff is entitled to the orders sought in the Plaint.
13. The Plaintiff is seeking a declaration that he is the legal and beneficial owner of the suit property. In this regard, he produced a sale agreement dated 6th August 2018 (PEX 6), which shows that he purchased the suit property from Nimrod Nyamu Mathew. He also produced a Certificate of Lease (PEX1), a Land Rate Payment receipt (PEX2), a Land Transfer document (PEX5), and a receipt for land transfer (PEX6), all indicating he is the registered owner of the suit property.
14. Section 24(a) of the Land Registration Act provides for the interest conferred by registration as follows;

Subject to this Act;

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.

15. Section 25 of the Land Registration Act provides for the rights of a proprietor as follows:

(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided by 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;...

Section 26 of the Land Registration Act provides that:-

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."

16. These provisions grant rights and privileges to the registered land owner and specify instances when the right can be taken away. No evidence was presented to show that the Plaintiff acquired the land fraudulently or through corrupt means.
17. The Plaintiff stated his workers were driven away from the suit property following instructions from the Defendant. Regarding whether the Defendant had encroached on the Plaintiff's land, the uncontroverted evidence and the production of the title deed are sufficient proof.
18. Having established that the Plaintiff is the registered owner of the suit property, I find that he is entitled to all the rights and interests appurtenant thereto.
19. Based on the evidence on record, this court finds and holds that the Plaintiff has proved his case on a balance of probabilities against the Defendant.
20. I therefore enter judgment for the Plaintiff against the Defendant in the following terms;
 - a) A declaration is hereby issued that the Plaintiff is the legal and beneficial owner of the property known as NAIROBI/BLOCK 136/6615 located in Embakasi Ranch measuring 0.1296 ha.**
 - b) A permanent injunction is hereby issued restraining the Defendant, whether acting by themselves, their servants, agents, contractors, proxies, and/or any other**

persons howsoever, from entering upon, trespassing upon, taking possession, remaining, damaging, developing, transferring, charging, or registering in the name of a third party or any other person other than the Plaintiff, or in any other manner whatsoever, interfering with the property known as NAIROBI/BLOCK 136/6615 located in Embakasi Ranch measuring 0.1296 ha.

- c) The OCS Ruai Police station to oversee compliance.***
- d) The Plaintiff is awarded costs of the suit and interest at court rates.***

JUDGMENT READ, DATED AND DELIVERED VIRTUALLY THIS 5TH DAY OF DECEMBER, 2025 AT NAIROBI.

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**HON. T. MURIGI
JUDGE**

IN THE PRESENCE OF: -

Musungu for the Plaintiff

Ahmed – Court Assistant