



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 11 OF 2018

AGGREY MUSUMBA AMALANDA.....PLAINTIFF

VERSUS

ELKANA BUYENGO ARONA.....DEFENDANT

JUDGEMENT

The plaintiff is the registered proprietor of L.R. Kakamega/Municipality Block 1/751 within Kakamega town PEx1 is a copy of the Land title Deed. The plaintiff avers that the defendant sometimes in 2016 without any lawful excuse and/or reason trespassed illegally on the property therein by fencing the same and constructed temporary structures. The defendant's actions have deprived the plaintiff the use of the property herein and the plaintiff continues to suffer loss of user with attendant damages. The defendant has refused, neglected and ignored to vacate the premises despite demand notice to sue having been issued. The defendant on 6th September caused a report to be made to Kakamega Police Station on allegations of malicious damage of property in respect of the property herein. The plaintiff was released on the same date and required to deposit Ksh. 20,000/= as cash bail to secure his freedom pending what the police described as further investigations. The plaintiff has been denied quiet enjoyment and use of the property herein by deliberate attempts of false complaints by the defendant to the police. The plaintiff pray for orders:-

1. That an eviction order be issued against the defendant, his agents, servants or personal representatives from L.R. NO. KAKAMEGA/MUNICIPALITY/BLOCK 1/751.
2. That a permanent injunction be issued against the defendant, his agents, servants or personal representatives from using, toiling, constructing thereon, disposing and/or transferring or any other manner dealing with L.R. KAKAMEGA/MUNICIPALITY BLOCK 1/751.
3. The plaintiff has suffered loss and damage caused by the actions of the defendant.

The defendant avers that sometimes in the year 1997 he was allocated plot no. UNS B.C.R NO. 5 KAKAMEGA MUNICIPALITY by the commissioner of lands vide PAC MIN of 24th April, 1997. Upon being given the letter of allotment the defendant paid for the rent and rates owing to the then Kakamega Municipal Council. The defendant further avers that he has paid all the required rates and rents in respect of the said parcel from 1997 to date. The defendant avers that he is the lawful recognized and legal owner of plot No. 5 Kakamega Municipality and has been in occupation of the same from 1997 to date. The defendant further avers that sometimes in September, 2017, the plaintiff attempted to encroach on the defendant's parcel of land aforesaid and upon noticing his ill-motivated intentions, reported the matter at Kakamega Police Station. The defendant further avers that the county government of Kakamega authorized him to develop the said parcel aforesaid through approval of plant presented to it. The defendant avers that the plaintiff has no known proprietary interest in the suit property as documents he relies on are a forgery, fraudulent and illegal.

The defendant prays the honourable court to dismiss the plaintiff suit and enter judgment in favour of the defendant for;

1. An order declaring the defendant to be the rightful owner and proprietor of UNS BCR No. 5 Kakamega Municipality Block 1/751 be cancelled forthwith and any entry in the lands registry on the same be revoked.
2. An order of permanent injunction be issued restraining the plaintiff from claiming, entering, encroaching, trespassing or in any other manner whatsoever whether acting by himself or through other people acting on his behalf from dealing with land known as UNS BCR No. 5 KAKAMEGA MUNICIPALITY.
3. Costs of the counterclaim.
4. Any other or further orders the court deems just and fit to grant.

DW2 a retired Land Administration Office gave evidence that the said land was surveyed but the same was not completed.

This court has carefully considered the evidence and submissions therein. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides 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.”

Section 26 (1) of the Land Registration Act states as follows:

“The Certificate of Title issued by the Registrar upon registration ... 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... 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.”*

The law is clear that, the Certificate of Title issued by the Registrar upon registration 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 and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

This court in considering this matter referred to the case of Elijah Makeri Nyangw’ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. Hon Justice Munyao Sila in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

PW1 produced a certificate of lease to show that he is the proprietor of L.R. Kakamega/Municipality Block 1/751 within Kakamega town PEx1 is a copy of the Land title Deed. The defence states that he did not produce any supporting documents hence the same is a forgery. The defendant produced an allotment letter and payment receipts and claims the said plot of land. I find that, the Certificate of Title issued by the Registrar upon registration 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 and the title of that proprietor was not challenged in this case. I see no evidence of fraud or misrepresentation on the part of the plaintiff. The search produced Pex2 further confirms that he is the registered owner. DEx1. the allotment letter referring to UNS. B.C.R. No. 5 – Kakamega Municipality is not sufficient to nullify the plaintiff’s title. I find the counterclaim has not been proved on a balance of probabilities and dismiss the same. I find that the plaintiff has proved his case on a balance of probabilities and I grant the following orders;

1. The the defendant, his agents, servants or personal representatives are to vacate the suit land L.R. NO. KAKAMEGA/MUNICIPALITY/BLOCK 1/751 within six (6) months from the date of this judgement and indefeasible order to issue.
2. That a permanent injunction be issued against the defendant, his agents, servants or personal representatives from using, toiling, constructing thereon, disposing and/or transferring or any other manner dealing with L.R. KAKAMEGA/MUNICIPALITY BLOCK 1/751.
3. Costs of this suit to the plaintiff.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 7TH DAY OF MAY 2019.

N.A. MATHEKA

JUDGE