



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 91 OF 2016**

**MUKWANO DISTRIBUTORS LIMITED.....PLAINTIFF**

**VERSUS**

**SEURI LEGUSI SANOYE.....DEFENDANT**

**JUDGMENT**

1. In the Amended Plaint dated 21<sup>st</sup> May, 2018, the Plaintiff has averred that it acquired parcel of land known as L.R. No. 26700/3 situate in North West of Mavoko Municipality in Machakos comprised in Grant No. 119942 by way of purchase and that when he sought to take possession of the land in July, 2015, the Defendant produced a Land Rent Payment Request dated 29<sup>th</sup> July, 2015 allegedly showing that he is the owner of the land.

2. The Plaintiff has averred that the Defendant purported to file Machakos HCCC No. 283 of 2010 in which he sued Fello Limited; that on 10<sup>th</sup> March, 2011, the Defendant obtained injunctive orders in Machakos HCCC No. 283 of 2010 and that the suit land has never been registered in favour of the Defendant herein.

3. According to the Plaintiff, the injunctive orders that the Defendant obtained in Machakos HCCC No. 238 of 2010 expired on 24<sup>th</sup> March, 2011 and that the Defendant has unlawfully impeded the Plaintiff from taking possession of the suit property. The Plaintiff is seeking for the eviction of the Defendant from the suit land. The Plaintiff is also seeking for an order restraining the Defendant from trespassing on the suit and for the costs of the suit.

4. The record shows that the Defendant was served with the court process by way of advertisement in the Standard Newspaper of 17<sup>th</sup> November, 2017. On 2<sup>nd</sup> November, 2018, the firm of Anyoka & Associates Advocate filed a Notice of Appointment of Advocates on behalf of the Defendant. However, the said law firm did not file a Defence to the suit. Instead, he filed a Notice of Motion dated 6<sup>th</sup> November, 2018 in which he sought to set aside the interim orders of injunction.

**The Plaintiff's case:**

5. This suit proceeded for hearing in the absence of the Defendant. The Plaintiff's Director, PW1, informed the court that the Plaintiff purchased the suit land from Fellow Limited vide an Agreement dated 3<sup>rd</sup> January, 2015. According to PW1, after paying the requisite rates to the County Government of Machakos and the Stamp Duty, the suit land was transferred in favour of the Plaintiff by way of a Transfer dated 28<sup>th</sup> April, 2015 on 30<sup>th</sup> April, 2015 and that the Plaintiff is currently the registered proprietor of L.R. No. 26700/3, I.R No. 119942/4.

6. PW1 produced in evidence the conveyance documents in respect of the suit land. According to PW1, there is a group of people who have built structures on the suit land which are permanent in nature. PW1 informed the court that in addition,

7. There is a church and a school on the suit land and that the Defendant is the leader of the group that is occupying the suit land.

8. The Plaintiff's advocate submitted that by virtue of the registration of the suit land in favour of the Plaintiff, the Plaintiff is the *bona fide* registered proprietor of the suit property; that the injunction that the Defendant herein obtained in Machakos HCCC No. 238 of 2010 lapsed by effluxion of time pursuant to Order 40 Rule 6 of the Civil Procedure Rules and that in any event, the said suit was dismissed for want of prosecution on 19<sup>th</sup> February, 2018.

9. The evidence before this court shows that vide a Transfer dated 28<sup>th</sup> April, 2015, Fellow Limited (*the Vendor*) transferred land known as L.R. Number 26700/3 measuring 12.13 Ha to the Plaintiff for Kshs. 150,000,000. The said Transfer was registered in the land title's registry, Nairobi on 30<sup>th</sup> April, 2015. The copy of the Grant number I.R. 119942, L.R. No. 26700/3 shows that the suit land is registered in

favour of the Plaintiff.

10. The Defendant has not disputed the assertions by the Plaintiff that it is the *bona fide* registered proprietor of the suit land. Indeed, even after the Defendant's advocate filed a Notice of Appointment dated 6<sup>th</sup> November, 2018, he did not file a Defence on behalf of the Defendant.

11. The absolute title to land by a registered proprietor as espoused in the Registration of Titles Act (*repealed*) was retained by Section 26 (1) of the Land Registration Act which provides as follows:

**“(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.”**

12. The Defendant did not offer any evidence to show that the Plaintiff procured the title in respect of the suit land by fraud or misrepresentation or through a corrupt scheme. Indeed, the Defendant's suit in which he had alleged that he was the proprietor of the suit land in Machakos HCCC No. 238 of 2010 was dismissed by the court on 19<sup>th</sup> February, 2018 for want of prosecution.

13. In the circumstances, I find that the Plaintiff has proved its case on a balance of probabilities. For those reasons, the Plaintiff's Plaint dated 29<sup>th</sup> August, 2016 is allowed as follows:

**a. The Plaintiff be and is hereby declared as the bona fide purchaser for value and owner of title L.R No. 26700/3, Grant No. I.R. 119942.**

**b. The Defendant is hereby ordered to vacate from Land Reference number 26700/3, Grant No. I.R. 119942.**

**c. The Defendant be and is hereby restrained whether by himself, his agents, servants, successors or assigns from entering, encroaching, trespassing, working, constructing, fencing, alienating, building or transacting on all that parcel of land known as L.R. No. 26700/3 comprised in Grant No. I.R 119942.**

**d. Each party to bear its/his own costs.**

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31<sup>ST</sup> DAY OF JULY, 2019.**

**O.A. ANGOTE**

**JUDGE**