



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 104 OF 2010

PIUS MUTHUSI MWITWA.....PLAINTIFF

VERSUS

RONALD NDELEVA KITHEKA.....1ST DEFENDANT

MITAU MILUI.....2ND DEFENDANT

JUDGMENT

1. In the Plaintiff dated 21st May, 2010, the Plaintiff has averred that at all material times, he was registered as the owner of land known as Matinyani/Kauma/1680 measuring 5.44 Ha; that the Defendants trespassed on the said land in the year 2005 and 2006 and that the Defendants have erected semi-permanent structures on the land.

2. The Plaintiff is seeking for a declaration that he is the lawful and bona fide owner of the suit land and for a permanent injunction restraining the Defendants from trespassing on the suit land. Although the Defendants were served with Summons to Enter Appearance, they neither entered appearance nor filed a Defence.

3. The Plaintiff, PW1, informed the court that the Defendants are his relatives; that he is the registered proprietor of land known as Matinyani/Kauma/1680 (*the suit land*) and that the suit land arose from the sub-division of land known as Matinyani/Kauma/687.

4. According to PW1, despite his protestations, the Defendants trespassed on the suit land in the year 2005 and 2006 and erected semi-permanent structures thereon. PW1 informed the court that the Defendants should be evicted from the suit land.

5. The evidence before me shows that the Plaintiff was registered as the proprietor of land known as Matinyani/Kauma/1680 on 18th My, 2007. A Title Deed was issued in favour of the Plaintiff on the same day. The Plaintiff produced in evidence the Title Deed and the official search in respect of the suit land.

6. The Defendants have not denied that the Plaintiff is the registered proprietor of the suit land. Indeed, the Defendants have not adduced any evidence to show that the Plaintiff's Title Deed was obtained fraudulently or by misrepresentation.

7. Section 27 of the Registered Land Act (*repealed*) under which the suit land is registered provides that the registration of a person as the proprietor of land shall vest in that person the absolute ownership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. Some of the rights accruing to the registered proprietor of land includes exclusive use and possession of such land.

8. Being the registered proprietor of the suit land, and in the absence of evidence to show that the Plaintiff obtained the Title Deed for parcel of land number Mitinyani/Kauma/1680 unlawfully, I find that the Plaintiff has proved his case on a balance of probabilities.

9. For those reasons, I allow the Plaintiff's Plaintiff dated 21st May, 2010 as follows:

a. A declaration be and is hereby issued that the Plaintiff is the lawful and bona fide owner and/or proprietor of all the land known as Matinyani/Kauma/1680.

b. A permanent injunction be and is hereby issued restraining the Defendants by themselves, agents and servants or through person acting under their authority from entering, interfering, depositing construction materials, construction, developing, cultivating, grazing and acting in any manner that may interfere with the Plaintiff's quiet possession and enjoyment of all the property known as Matinyani/Kauma/1680.

c. The Defendants be evicted from all the property known as Matinyani/Kauma/1680 and the structures erected thereon by the

Defendants be demolished.

d. The Defendants to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 20TH DAY OF SEPTEMBER, 2019.

O.A. ANGOTE

JUDGE