



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 394 OF 2017**

**EDWIN OMORI INDIA.....PLAINTIFF**

**VERSUS**

**SARAFINA WANJIKU...1<sup>ST</sup> DEFENDANT**

**ROBERT GATHERU ....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. In the Plaintiff dated 19<sup>th</sup> September, 2017, the Plaintiff averred that he is the lawful owner of land known as Mavoko Municipality Block 21/87 having purchased it on 11<sup>th</sup> April, 2013 from the original allottee, one Beattah Mwangi Waweru; that the Defendants have never been registered as the owners of the said land and that on diverse dates in the month of July and August, 2017, the Defendants trespassed on the suit property.
2. The Plaintiff is praying for a permanent injunction restraining the Defendants from trespassing on the land and for a permanent mandatory injunction compelling the Defendants to demolish and remove their structures from the suit property. Although the Defendants were served with the Summons and the Plaintiff, they neither entered appearance nor filed a Defence. The matter proceeded for hearing as undefended.
3. The Plaintiff, PW1, informed the court that he purchased the suit land on 11<sup>th</sup> April, 2013 vide an Agreement of the same date and that the owner of the land was known as Beattah Mwangi Waweru while the original allottee was Bantmo Investment Limited.
4. The Plaintiff, PW1, produced in evidence the Agreement of Sale dated 11<sup>th</sup> April, 2013; the Transfer of Lease, the Certificate of Lease for the suit property and the Certificate of Official Search. It was the evidence of PW1 that he erected a structure on the suit land in July, 2017 and that the Defendants demolished the same.
5. The Plaintiff's advocate submitted that the Plaintiff's title documents evidencing ownership of the suit property has not been challenged; that the Plaintiff proved that he owns the suit property and that the Defendants should be evicted from the suit premises.
6. The evidence before this court shows that on 11<sup>th</sup> April, 2013, the Plaintiff purchased parcel of land known as Mavoko Municipality Block 21/87 (*the suit property*) for Kshs. 520,000. The Plaintiff also produced a letter dated 1<sup>st</sup> October, 1996 which shows that the said land was allocated to the seller, Beattah Mwangi Waweru, the then Commissioner of Lands.
7. Other than the duly executed and registered transfer document, PW1 also exhibited the original Certificate of Lease and the official searches. The two documents shows that the Plaintiff was registered as the proprietor of the suit land on 17<sup>th</sup> November, 2016.
8. Section 24 of the Land Registration Act provides that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land. On the other hand, Section 26 provides that the Certificate of Title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission 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.
9. Section 26(1) (c) of the same Act provides that the title of the proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation or where the certificate has been acquired illegally, unprocedurally or through a corrupt scheme.
10. The Defendants have not adduced any evidence to show that the Plaintiff's Certificate of Lease was obtained fraudulently or by misrepresentation, illegally, unprocedurally or through a corrupt scheme.

11. That being the case, and the Plaintiff being the registered proprietor of the suit property, I find that the Plaintiff has proved his case on a balance of probability. The Plaintiff's Plaint dated 19<sup>th</sup> September, 2017 is therefore allowed in the following terms:

**a. A permanent injunction be and is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants by himself, his agents, servants and or any other persons whomsoever from encroaching upon, trespassing onto, constructing on or remaining on or in any way howsoever interfering with all that plot known as Land Reference Number Mavoko Municipality Block 21/87.**

**b. A permanent mandatory injunction be and is hereby issued compelling the 1<sup>st</sup> and 2<sup>nd</sup> Defendants by themselves, servants or agents to demolish and remove all the illegal construction within the Plaintiff's Land Reference Number Mavoko Municipality Block 21/87 and to demolish all the buildings and illegal erections interfering with the activities of the Plaintiff.**

**c. Each party to pay for his own costs.**

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 18<sup>TH</sup> DAY OF OCTOBER, 2019.**

**O.A. ANGOTE**

**JUDGE**