

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 44 OF 2016

KAHAWA WEST JUBILEE INVESTMENT LTD.....PLAINTIFF

VERSUS

JAMES GITAU1ST DEFENDANT

JOHN KAINGA2ND DEFENDANT

JUDGMENT

1. In the Plaintiff dated 15th June, 2016, the Plaintiff has averred that he is the registered proprietor of land known as Ndalani/Mavoloni Block 1/1009 (*the suit property*); that he acquired the land from one Moses Mutune Kithome for valuable consideration and that in the year 2009, the Defendants jointly and severally trespassed on the suit land.
2. The Plaintiff's claim is for an order of permanent injunction restraining the Defendants from trespassing on the suit land and for an eviction order to issue.
3. Although the Defendants were served with the Defence, they neither entered appearance nor filed a Defence. The suit proceeded undefended.
4. The Plaintiff's Director, PW1, informed the court that the Plaintiff purchased parcel number Ndalani/Mavoloni Block 1/1009. PW1 produced in evidence the Transfer documents dated 29th February, 2016. The said Transfer document shows that the Plaintiff purchased the suit property from Moses Mutune Kithome in consideration of "SALE". The Transfer was registered by the Land Registrar on 9th March, 2016.
5. PW1 also produced in evidence the Title Deed for parcel of land known as Ndalani/Mavoloni Block 1/1009 issued on 16th October, 2015. Section 26(1) of the Land Registration Act 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.”

6. Considering that the Defendants have not rebutted the averments of the Plaintiff, neither have they shown that the Plaintiff's Title Deed was obtained fraudulently or by misrepresentation, I find that the Plaintiff has proved his case on a balance of probability.
7. For those reasons, I allow the Plaintiff dated 15th June, 2016 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 18TH DAY OF OCTOBER, 2019.

O.A. ANGOTE

JUDGE