



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO.565 OF 2009

LEONARD NJOGU.....PLAINTIFF

=VERSUS=

PERMENAS KABUTHIAL.....DEFENDANT

JUDGEMENT

1. The plaintiff has filed this suit against the defendant seeking:-

- a. An order of eviction and vacant possession of LR No. Muguga/Kanyariri/450.**
- b. Mesne profits.**
- c. Costs of the suit.**
- d. Interest on (b) and (c) above.**
- e. An other remedies that this honourable court might deem fit to grant.**

2. Upon being served with copies of plant and summons to enter appearance, the defendant entered appearance and filed a statement of defence dated 8th December 2009.

3. By an order granted on 31st May 2010 Hon. J. A. O. Muchelule struck out the defence and entered judgment in favour of the plaintiff. The honourable Judge also ordered that the suit be set down for formal proof.

4. PW1 Leonard Njogu told the court that he is the registered owner of LR No. Muguga/Kanyariri/450, situated in Kikuyu. He bought it through a public auction on 27th July 2007. The suit property was being sold by Housing Finance Corporation of Kenya through Dolphin Auctioneers. The defendant had defaulted in the loan repayments. He further told the court that the transfer documents were executed on his favour and the title was issued to him on 18th October 2007. He produced the title deed as exhibit P1. He said in 2008 he took possession and did some developments on the suit property. He said he was later evicted from the suit property. He produced a certificate of official search dated 16th February 2009 as exhibit in this case. PW1 adopted his witness statement as part of his evidence. He also relied entirely on the documents in the list of documents, exhibits P1 –P5 respectively. He prays for an eviction order. He said the defendant's wife and children have been on the land for the last nine (9) years. He also prays for mesne profit of Kshs. 2 million plus costs of the suit and interest. The plaintiff's case has not been controverted. The plaintiff produced a current valuation of the suit property as exhibit P6.

5. I have considered the pleadings, the evidence on record, the written submissions of counsel and the authorities cited. There is no doubt that the plaintiff is the registered owner of the land reference No. Muguga/Kanyariri/450 located at Kikuyu. It is also the plaintiff's evidence that he took possession of the property from 25th February 2008 to 6th March 2009 when he was evicted and the defendant took over the already developed property and has been in occupation of the property to date. They are trespassers on the suit property. As the registered owner of the suit property the plaintiff is entitled to enjoy all the rights appurtenant to the parcel of land including taking physical possession of the same. I rely on the case of **Kariuki Mathu vs Registered Trustees of Shilo Tabernacle Church & Another [2018] eKLR** where the court issued an eviction notice based on the fact that the plaintiff was the legal owner of the property. The defendant was in actual possession, and that several notices to vacate had been issued to the defendant without any success.

6. In the case of **Mistry Valji vs Jahendra Raichand & 2 Others [2016] eKLR** the court stated thus:-

“.....An award of damages and mesne profits is an exercise of discretion. This court will not ordinarily interfere with that discretion unless the judge took into account irrelevant factor, or left out of account a relevant one or that the award was so inordinately low or high that it must be wholly erroneous estimate. See Kemfro Africa Ltd vs Lubia [1987] KLR 30. The award depended on the period it is claimed the appellant was in wrongful occupation.....”.

7. In the instant case the plaintiff told the court that the defendant took actual possession of the suit property on 6th March 2009 and has been in continuous occupation of the same to date. As a result the plaintiff has suffered loss and damage, I award Kshs.2 million as per the earlier valuation which I think is reasonable. The upshot of the matter is that the plaintiff has proved his case on a balance of probabilities as against the defendant. I enter judgement on his favour as follows:

a. That an order of eviction and vacant possession be and is hereby issued. The defendant and or his representatives do give vacant possession within (sixty) 60 days from the date of this judgement, in default the plaintiff shall be at liberty to secure forceful eviction.

b. Kshs. 2 million being mesne profits.

c. Costs of the suit and interest.

It is so ordered.

Dated, signed and delivered in Nairobi on this 17th day of October 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

Ms Kiaritha for the Plaintiff

No appearance for the Defendant

Kajuju - Court Assistant