



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 299 OF 2018

PETER MWEBI & 12 OTHERS.....PLAINTIFFS

VERSUS

JAMES SAFARI KOMBE & BROTHERSDEFENDANTS

JUDGMENT

1. By a Plaint dated and filed on 17th December, 2018, and amended on 21st March, 2019, the Plaintiffs claim to be the registered proprietors of all those pieces of land situated in Mombasa County known as a PLOT NUMBERS NO

- a. 19803/I/MN CR.59669 SURVEY NUMBER 348710,
- b. 19813/I/MN CR.59679 LAND SURVEY NO. 348720,
- c. 19814/I/MN CR.59680 LAND SURVEY NO. 348721
- d. 19824/I/MN CR.59690 LAND SURVEY NO. 348730
- e. 19823/I/MN CR.59689 LAND SURVEY NO. 348729
- f. 20778/I/MN CR.62092 LAND SURVEY NO. 362236
- g. 20779/I/MN CR.62093 LAND SURVEY NO. 362237
- h. 20777/I/MN CR.62091 LAND SURVEY NO. 362235
- i. 19807/I/MN CR.59673 LAND SURVEY NO. -----
- j. 19808/I/MN CR.59674 LAND SURVEY NO. -----
- k. 19803/I/MN CR.59669 LAND SURVEY NO. 348710
- l. 20781/I/MN CR.62095 LAND SURVEY NO. 362239
- m. 20784/I/MN CR.62098 LAND SURVEY NO. 362242
- n. 20794/I/MN CR.62108 LAND SURVEY NO. 362252
- o. 20792/I/MN CR.62106 LAND SURVEY NO. 362250 (hereinafter referred to as suit properties).

2. The Plaintiffs state that the defendants by themselves, their agents, servants and/or employees have wrongfully entered the suit properties and thereby taken possession of them and commenced construction of buildings and/or structures without any colour of right or any legal right known to law. That by reason of the defendants' actions, the plaintiffs have been deprived of the use and enjoyment of the land and have thereby suffered loss and damage. The plaintiffs aver that despite demand and warning of intention to sue in default, the defendants have neglected and refused to make good the plaintiffs' request/demands, hence this suit.

3. The plaintiffs' claim against the defendants jointly and severally is for orders as follows:

i. A declaration that the Plaintiffs are entitled and are the legal owner of the suit properties.

ii. An eviction order by way of a mandatory injunction that the defendants do demolish and/or pull to ground level the illegal structures standing on the suit land and thereafter vacate with immediate effect the properties known as sub-division numbers

- a. 19803/I/MN CR.59669 SURVEY NUMBER 348710,
- b. 19813/I/MN CR.59679 LAND SURVEY NO. 348720,
- c. 19814/I/MN CR.59680 LAND SURVEY NO. 348721
- d. 19824/I/MN CR.59690 LAND SURVEY NO. 348730
- e. 19823/I/MN CR.59689 LAND SURVEY NO. 348729
- f. 20778/I/MN CR.62092 LAND SURVEY NO. 362236
- g. 20779/I/MN CR.62093 LAND SURVEY NO. 362237
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- k. 19803/I/MN CR.59669 LAND SURVEY NO. 348710
- l. 20781/I/MN CR.62095 LAND SURVEY NO. 362239
- m. 784/I/MN CR.62098 LAND SURVEY NO. 362242
- n. 20794/I/MN CR.62108 LAND SURVEY NO. 362252
- o. 20792/I/MN CR.62106 LAND SURVEY NO. 362250

iii. The officer in Charge of Bamburi Police Station be ordered to supervise the eviction and demolition of all the illegal structures on the Suit properties.

iv. A permanent injunction restraining the defendants whether by themselves, their servants, agents or otherwise howsoever from encroaching and/or trespassing and/or taking possession moving into occupying, developing and constructing any structures whatsoever on the suit properties.

v. Costs of the suit and interest thereon at courts rates.

vi. Further and/or other relief that this Honourable Court shall deem fit and appropriate.

4. The defendants were served with summons to enter appearance but failed to do so. Upon request by the plaintiffs, interlocutory judgment was entered against the defendants on 19th March 2019. The suit proceeded for formal proof on 3rd June, 2019 when the 1st Plaintiff testified and the plaintiffs did not call any witness.

5. The 1st Plaintiff relied on his witness statement filed on 17th December 2018 which basically reiterated the facts as contained in the plaint and produced the authority given him by the other plaintiffs. The 1st plaintiff added that he bought the suit properties together with the other plaintiffs. That the defendants have denied them access into the suit properties and have threatened them not to ever step into the said properties and hence the need for police assistance. The Plaintiffs produced copies of the title documents for the suit properties in their names and a survey report dated 20th September 2018 by Edward Kiguru Land Surveyors. The Plaintiffs also produced documents in respect of two criminal cases for offence of forcible detainer against the defendants, as well as photographs showing the encroachment by the defendants.

6. The court has carefully considered the evidence on record. The issue that calls for determination is whether the plaintiffs have established that they are the owners of the suit properties and whether the defendants have trespassed on it and also whether the plaintiffs are entitled to the prayers sought.

7. The Plaintiffs have tendered documentary evidence that show that the suit properties are registered in their names. They produced copies

of the title deeds as P.exhibit 2(a) to 2 (o). They also produced a survey report dated 20th September 2018 prepared by Edward Kiguru Land Surveyors detailing the encroachments as p.exhibits 3(a), and the photographs as p.exh 3(b). From the material placed before me, there is no dispute that the plaintiffs are the registered owners of the suit properties. Section 24(a) of the Land Registration Act provides that the registration of a person as the proprietor of land vests in that person the absolute ownership of the suit land together with all rights and privileges associated with that status. Section 26(1) of the said Act provides that the certificate of title issued by the Registrar upon registration or to a purchaser of land upon transfer 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 thereof and that the said title shall not be challenged save on ground of fraud or misrepresentation to which the holder is shown to be a party or where the title is acquired illegally, unprocedurally or through a corrupt scheme.

8. The defendants did not defend this suit. The plaintiffs' titles over the suit properties are therefore not challenged on any of the grounds mentioned above or at all. In the absence of any such challenge, I am enjoined by law to take the plaintiffs on the basis of the titles they hold in their names to be the absolute and indefeasible owners of the suit properties. As the absolute proprietors of the suit properties, the plaintiffs are entitled to enjoy rights and privileges associated with such ownership which includes exclusive use, possession and enjoyment thereof without interference by any third party. The Plaintiffs have asserted that the defendants entered the suit properties forcefully and started utilizing the properties as their property and went ahead to build houses or structures thereon. The defendants have been charged with forcible detainer.

9. The plaintiffs' evidence has not been challenged and on the basis of the unchallenged evidence, I am satisfied that the plaintiffs have proved that the defendants entered the suit properties unlawfully and constructed buildings and structures thereon. The defendants having unlawfully entered the suit properties without the permission of the plaintiffs are trespassers on the suit properties and the plaintiffs is entitled to judgment against them as prayed in the Plaint. Accordingly, I do find that the plaintiffs have proved their case on a balance of probabilities. In the end I will enter judgment for the plaintiffs against the defendants in the following terms.

i. A declaration that the plaintiffs are entitled and are the legal owners of the suit properties.

ii. An eviction order by way of a mandatory injunction that the defendants do demolish and/or pull down to ground level the illegal structures on the suit land and thereafter vacate within 30 days of the service of the decree from the properties known as subdivision numbers:-

- a. 19803/I/MN CR.59669 SURVEY NUMBER 348710,
- b. 19813/I/MN CR.59679 LAND SURVEY NO. 348720,
- c. 19814/I/MN CR.59680 LAND SURVEY NO. 348721
- d. 19824/I/MN CR.59690 LAND SURVEY NO. 348730
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iii. The officer in charge Bamburi police station be ordered to supervise the eviction and demolition of all the illegal structures on the suit properties.

vi. A permanent injunction restraining the defendants whether by themselves, their servants, agents or otherwise howsoever from encroaching and/or trespassing and/or taking possession moving into occupy, developing and constructing any structures whatsoever on the suit properties.

vi. Costs of the suit and interest thereon at court rates.

DATED, SIGNED and DELIVERED at MOMBASA this 16th day of October 2019.

C.K. YANO

JUDGE

IN THE PRESENCE OF:

Olwande for plaintiffs

No appearance for defendant

Yumna Court Assistant

C.K. YANO

JUDGE