



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 838 OF 2015

MIRIAM WANJIRU WAITITU.....PLAINTIFF

VERSUS

MURUTHI NGUYO.....DEFENDANT

JUDGMENT

The plaintiff is the registered proprietor of all that parcel of land known as Ruiru/Mugutha Block 1/T.480 (hereinafter referred to as “the suit property”). The plaintiff was registered as the proprietor of the suit property on 25th September, 1992 and was issued with a title deed on the same date. The plaintiff acquired the suit property from Nyakinyua Investments Limited.

The plaintiff brought this suit against the defendant on 1st September, 2015 seeking an order for the eviction of the defendant from the suit property and a permanent injunction restraining the defendant from in any manner interfering with the suit property together with the buildings and other improvements thereon. In her plaint dated 28th August, 2015, the plaintiff averred that the defendant had illegally and without any reasonable cause entered and erected structures on the suit property. The plaintiff averred that upon entering the suit property as aforesaid, the defendant engaged in acts of harassment and intimidation of the plaintiff thereby curtailing the plaintiff’s right to enjoy peaceful occupation of the property. The plaintiff averred that despite demand and notice of intention to sue, the defendant had refused and/or neglected to vacate the suit property.

The defendant was served with summons to enter appearance but failed to do so. The suit came up for formal proof on 14th February, 2019 when the plaintiff gave evidence and closed her case. In summary, the plaintiff told the court that she was a member of Nyakinyua Investments Limited which sold to her two parcels of land known as Plot No. 479 and Plot No. 480. Nyakinyua Investments Limited (hereinafter referred to only as “Nyakinyua”) issued her with plot ownership certificates for the two parcels of land. One of the parcels of land namely, Plot No. 479 had no dispute. The dispute before the court concerned Plot No. 480 (the suit property) on which one, Harrison Kimani trespassed in 1992 and constructed a house. She stated that when the said Harrison Kimani entered the suit property and commenced construction of the said house, he was told by Nyakinyua that the property belonged to the plaintiff and was asked to stop construction. Harrison Kimani however ignored the pleas by Nyakinyua to stop construction and continued until the building of the house was completed.

She stated that Harrison Kimani subsequently died and left his wife one, Naomi Mwhaki on the property. Naomi Mwhaki also died and left the defendant on the suit property. The plaintiff stated that she sued the defendant because he was the one in occupation of the suit property. The plaintiff produced in evidence as exhibits, plot ownership certificates that were issued to her by Nyakinyua for Plot No. 479 and the suit property. She also produced as exhibit a copy of the title deed dated 25th September, 1992 that was issued to her after she was registered as the owner of the suit property.

After the close of evidence, the plaintiff did not make closing submissions. The plaintiff relied on the pleadings and the evidence on record and urged the court to grant the reliefs sought. I have considered the plaintiff’s claim and the evidence tendered in proof thereof. The plaintiff’s claim against the defendant is based on trespass. Trespass has been defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, Clerk & Lindsell on Torts, 18th Edition, page, 923, paragraph, 18-01. In the case of Gitwany Investments Limited v Tajmal Limited & 3 others [2006] eKLR, it was held that title to land carries with it legal possession.

What I need to determine is whether the plaintiff has proved that she is the owner of the suit property and that the defendant has entered and occupied the same without any justifiable cause. The plaintiff testified that she was the registered owner of the suit property. She produced in evidence a copy of the title deed for the suit property in her name and a copy of a certificate of official search on the register of the suit property dated 18th February, 2019 (see bundle of documents filed on 22nd March, 2019) which confirmed that she was the owner of the suit property.

Under section 24 of the Land Registration Act, 2012, the registration of the plaintiff as the proprietor of the suit property vests upon her absolute ownership thereof together with all rights and privileges associated with such ownership. Under section 25 of the said Act, the plaintiff’s rights over the suit property are indefeasible except as provided under the said Act. Section 25 (1) of the Land Registration Act, 2012 provides as follows:

(1) The rights of a proprietor whether acquired on first registration or subsequently for valuable consideration or by an order of court shall not be liable to be defeated except as provided in this Act and shall be held by the proprietor together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever but subject:

a. To the leases, charges and other encumbrances and to the conditions and restrictions if any shown in the register; and

b. To such liabilities rights and interests as affect the same and are declared by section 28 not to require noting on the register unless the contrary is expressed in the register.

The suit was not defended by the defendant. The evidence that was tendered by the plaintiff was therefore not controverted by the defendant. The plaintiff's title to the suit property was not challenged. The plaintiff's testimony that the defendant entered into and occupied the suit property without her consent or authority was not disputed. The plaintiff having proved her ownership of the suit property and the defendant's entry and occupation thereof, the onus was upon the defendant to justify his occupation of the suit property. In the absence of any evidence from the defendant, the only conclusion this court can make is that the defendant had no justifiable cause for his entry and occupation of the suit property and as such he is a trespasser on the property.

For the foregoing reasons, I am satisfied that the plaintiff has proved her claim against the defendant and that she is entitled to the prayers sought in the plaint. I therefore enter judgment for the plaintiff against the defendant in terms of prayers (a) and (b) in the plaint dated 28th August, 2015. The defendant shall vacate and handover possession of the suit property to the plaintiff within 60 days from the date hereof failure to which the plaintiff shall be at liberty to apply for warrants for his forceful eviction from the suit property. A copy of the decree extracted from this judgment shall be served upon the defendant forthwith by the plaintiff and an affidavit of service shall be filed in court. The filing of the said affidavit of service shall be a condition precedent to any further proceedings herein at the instance of the plaintiff.

Delivered and Dated at Nairobi this 19th day of December 2019

S. OKONG'O

JUDGE

Judgment read in open court in the presence of:

Ms. Wambua for the Plaintiff

N/A for the Defendant

Ms. C. Nyokabi-Court Assistant