



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 102 OF 2013

UTISI LIMITED.....PLAINTIFF

VERSUS

HELLEN KIILI

MACHAKOS COUNTY EXECUTIVE OFFICER,

DEPARTMENT OF DECENTRALIZED UNITS,

URBAN AREAS AND MUNICIPALITIES.....1ST DEFENDANT

JOSHUA MUSILI

MACHAKOS COUNTY EXECUTIVE COMMITTEE MEMBER,

DEPARTMENT OF LAND, ENERGY, ENVIRONMENT

AND NATURAL RESOURCES.....2ND DEFENDANT

THE COUNTY GOVERNMENT OF MACHAKOS.....3RD DEFENDANT

JUDGMENT

1. In the Plaintiff dated 11th November, 2013, the Plaintiff averred that it is the registered proprietor of parcels of land known as Kyumbi Trading Centre/67, 68, 73 and 74, Machakos County; that the Defendants trespassed on the land on or about 24th October, 2013 and that a permanent injunction should issue restraining them from trespassing on the said land.
2. In their joint Defence, the Defendants made general denials to the Plaintiff's claim and stated that the suit properties were illegally acquired.
3. The matter proceeded for hearing on 10th October, 2017 when only the Plaintiff's Chairman, PW1, testified.
4. PW1 informed the court that the Plaintiff is a body corporate and that it is the registered proprietor of parcels of land known as Kyumbi Trading Centre/67, 68, 73 and 74 (*the suit properties*); that the Plaintiff is a bona fide purchaser for value without notice and that the Defendants should be restrained from trespassing on the suit properties.
5. PW1 produced in evidence the Certificates of Lease which were issued to the Plaintiff in respect to the suit properties on 17th April, 2008 together with the Certificates of official searches.
6. The Defence did not call any evidence.
7. The Plaintiff's advocate submitted that the Defendants have not set up a Defence to the Plaintiff's claim and that under Section 32(2) of the Registered Land Act, a Certificate of Lease is prima facie evidence of the matters shown in the certificate.

8. The Plaintiff's advocate further submitted that as a result of the alleged trespass, the court ought to award the Plaintiff *mesne profits* and general damages for loss suffered as a result of the trespass.

9. The Plaintiff's advocate referred this court to several authorities which I have considered.

10. The evidence before me shows that the Plaintiff was registered as the proprietor of the suit properties on 17th April, 2008. Indeed, the Plaintiff produced in evidence the Certificates for Leases and the official searches showing that it is the registered proprietor of the suit land.

11. Although the Defendants averred in the Defence that the Plaintiff acquired the suit land illegally, no evidence was called by the Defendants to show how the Plaintiff acquired the suit land illegally.

12. The Defendants did not call any witness to challenge the Plaintiff's titles. Consequently, the issue of the Plaintiff having acquired the title documents illegally was not proved.

13. The Plaintiff's titles are registered under the Registered Land Act (*repealed*). Section of 27(b) of the said Act provides that the registration of a person as the proprietor of a Lease shall vest in that person the leasehold interest described in the Lease.

14. Section 32(2) of the Act further provides that a Certificate of Lease shall be prima facie evidence of the matters shown in the certificate.

15. In the circumstances, I find and hold that the Plaintiff has proved on a balance of probabilities that it is the absolute and indefeasible proprietor of the suit land.

16. Although the Plaintiff has prayed for an award of *mense profits* and general damages, no evidence was called from a valuer or otherwise to prove the claim for damages. In the circumstances, I decline to award any damages.

17. For those reasons, I allow the Plaint dated 11th November, 2013 in the following terms:

a. A permanent injunction be and is hereby issued restraining the Defendants jointly and severally whether by themselves or through their appointed agents, servants and or employees from trespassing on all that property known as Kyumbi Trading Centre/67, 68, 73 and 74, Machakos County, the suit properties.

b. An order be and is hereby issued that the Defendants do forthwith jointly and severally remove any of their machinery stationed on the suit properties or any part of properties Kyumbi Trading Centre/67, 68, 73 and 74, Machakos County.

c. Costs of the suit to be paid by the Defendants.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF FEBRUARY, 2018.

O.A. ANGOTE

JUDGE