



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

CIVIL SUIT NO. 15 OF 2016

ASTORIA PARK LIMITED.....PLAINTIFF/APPLICANT

VERSUS

1. NASIB NGUMBAO.....1ST DEFENDANT/RESPONDENT

2. WILSON KEMENWA MUDOME.....2ND DEFENDANT/RESPONDENT

3. WILLIAM CHIBUTE NDUNE.....3RD DEFENDANT/RESPONDENT

4. NICKSON KITSAO CHARO.....4TH DEFENDANT/RESPONDENT

JUDGMENT

1. By its Complaint dated 5th February 2016, Astoria Park Limited prays for Judgment against the 4 Defendants for:-

i. A mandatory injunction to compel the Defendants, their relatives, agents, servants and/or any other person under their instructions to give vacant possession of all that parcel of land known as CR 22740 situated North of Mtwapa Creek in Kilifi District and to demolish the structures constructed thereon and to remove all the materials failing which the structures be demolished and removed at their costs.

ii. An order of permanent injunction restraining the person mentioned in (i) above from trespassing upon and/or dealing or interfering in any way with the said property.

iii. General Damages for loss of use of the said piece of land since 2015 to date and interest at prevailing Court rates.

iv. Mesne profits arising out of the illegal occupation of the suit property from the year 2015 to the time they vacate the land.

v. Costs of this suit and interest at Court rates.

2. The basis of the Plaintiff's prayer is the averment at paragraph 3 of the said complaint that all material times, it has been and remains the registered proprietor of the said land which contains by measurement one decimal one two one (1.121) hectares or thereabouts and being subdivision number 1611 (original No. 495/15/III Mainland North-Kilifi).

3. It is further the Plaintiff's case that as the owner of the said piece of land, it was desirous of developing the same but all efforts to do so have come to naught owing to interference by the defendants who have unlawfully interfered with, frustrated and/or prevented the plaintiff from doing so.
4. From the record, it is apparent that Summons to Enter Appearance together with the plaint and other documents were served upon the Defendants on or about 10th February 2016. The Defendants however never entered appearance nor filed a defence. Similarly, while it is apparent that hearing notices were served upon them, the Defendants did not attend Court on the date when this matter came up for hearing, particularly on 16th March 2017 when the hearing proceeded.
5. On the said date, Mr. Mohamed Wanyoke(PW1), the Plaintiff's Managing Director told the Court that the Plaintiff is the registered owner of the property known as Subdivision No. 1611 (Original No. 495/15) Section III Mainland North having duly purchased the same and registered transfer documents. An entry to confirm the transfer is registered at the Mombasa Land Registry as CR No. 22740.
6. It was PW1's testimony that the company has always intended to develop the above mentioned property but all efforts to do so have been hindered by the Defendants who trespassed onto it and constructed permanent structures thereon without the Plaintiff's consent, approval or permission.
7. According to PW1, he had on numerous occasions on behalf of the Plaintiff Company requested the Defendants herein to vacate the suit property but the Defendants have ignored the said requests and continue to-date with their trespass, which has caused the company massive damages and loss.
8. In support of their case, PW1 produced the Certificate of Title for the land (PEX 1) and a Certificate of Incorporation showing the Plaintiff is an incorporated company with two directors (PEX 2). The Certificate of Title is in the Plaintiff's name. A Certificate of Official search conducted on 29th January 2016 (PEX 3) shows that the land was as at that date registered in the name of the Plaintiff.
9. Section 26(1) of the Land Registration Act Vol. 3 of 2012 provides that:-
- “The Certificate of Title issued by the Registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all Courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party or where the Certificate of Title has been obtained illegally, unprocedurally or through a corrupt scheme.”***
10. Arising from the foregoing, and in the absence of any evidence controverting that of PW1, I find and hold that the Plaintiff is the registered proprietor of the suit property and is therefore entitled to enjoy all the rights of proprietorship including physical possession thereof as provided under the law to the exclusion of any other person.
11. In the circumstances, I find merit in the Plaintiff's case. The Plaintiff did not however tender any evidence in proof of the alleged or any damage and/or losses incurred as a result of the defendant's trespass.
12. Accordingly I enter Judgment against the Defendants in terms of Prayers (i) and (ii) of the Plaint. The Plaintiffs shall also have the costs of this suit.

Dated, signed and delivered at Malindi this 22nd day of February, 2018.

J. O. OLOLA

JUDGE