



REPUBLIC OF KENYA

IN THE ENVIRONMENT AN LAND COURT

AT KAJIADO

ELC CASE NO. 385 OF 2017

(FORMERLY MACHAKOS ELC NO. 223 OF 2014)

NATHANIEL ORUMA.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF KAJADO.....1ST DEFENDANT

KUBENTA KISIMIR.....2ND DEFENDANT

SAIMIE SEKI.....3RD DEFENDANT

JUDGEMENT

By a Plaint dated the 11th December, 2014 and filed on 17th December, 2014, the Plaintiff prays for judgement against the defendants in the following terms:

- a) A declaration that the Plaintiff is the owner of plot No. 1945/Business – IL Bissil T. Centre
- b) A permanent injunction restraining the Defendants jointly and severally from laying claim to plot No. 1945/Business - IL Bissil T. Centre.
- c) Costs of the suit.
- d) Interest on (c) above from date of filing till payment in full.

The Defendants were served with summons to enter appearance on 9th January, 2015 and 15th January, 2015 respectively but never entered appearance nor filed Defences. Interlocutory judgement was entered against the Defendants on 9th March, 2015 but later the 1st Defendant filed a statement of Defence on 14th May, 2015 where it stated that the sale/purchase of plot 1495 Business – IL Bissil was not brought to its attention. It averred that the plot 1495 /Business IL – Bissil T. Centre is neither registered in the name of the Plaintiff or those of the Defendants. It confirms that through its County Surveyor, it issued a letter stopping development on the suit land pending investigation and determination over the ownership of plot 1945/ Business IL – Bissil T. Centre which is the suit land herein.

The matter proceeded to formal proof on 18th September, 2017

Plaintiff's Evidence

Plaintiff as PW1 adopted the statement dated 17th December 2014, which he had filed in court. He confirmed having purchased the suit land from Siyeyio Moyionko. They signed an agreement on 15th August, 2013 and he paid Kshs. 400,000 as purchase price. He produced the agreement as exhibit '2'. He stated that the vendor gave him the Original Letter of Allotment dated the 8th October, 2007 and a copy of his National Identity Card which he produced as exhibit '3a' and '3b' respectively. He contended that he thereafter took possession of the suit land and has been paying rates to the 1st defendant. He claims after taking possession, two people came, destroyed his fence, and he reported the matter to the County Surveyor Okoth Angira who wrote a letter to them advising them to stay away from the suit land. He produced the said letter dated the 14th April, 2014 as exhibit '5'. He said the persons persisted in encroaching on the suit land and he instructed his lawyers to send them a demand letter dated the 28th April, 2014. He reiterates that the Committee dealing with the land dispute within the County

Government made a decision in his favour that he was the bona fide allottee of the suit land. He produced the letter dated the 2nd September 2014, notifying him of the said decision as exhibit '8'. After the decision from the relevant committee, his building plans were approved on 24th September, 2014. He produced the building plans as exhibit '9'. He stated that he later received a letter dated the 2nd October, 2014 informing him to stop construction but he did not know the reason why.

The Plaintiff closed his case and filed submissions on 12th October, 2017 which I have considered.

Analysis and Determination

After perusal of the pleadings filed herein including the list of documents and upon hearing the testimony of PW1, I find that the following are the issues for determination:

- Whether the Plaintiff is the legal proprietor of the suit land.
- Whether the Defendants have interfered with his quiet possession of the suit land.
- Whether the Defendants and or their agents/servants should be permanently restrained from trespassing and or claiming ownership of the suit land.
- Who should bear the Costs of the suit

Whether the Plaintiff is the legal proprietor of the suit land.

It is not in dispute that the Plaintiff purchased the suit land from Siyeyio Moyionko on 15th August, 2013 and paid Kshs. 400,000 as purchase price. Further it is not in dispute that Siyeyio Moyionko was allotted the suit land by the defunct Ol Kejuado County Council as evidenced by the Letter of Allotment dated the 8th October, 2007 (exhibit '3a'). What is in dispute is that the Defendants have interfered with the Plaintiff's quiet possession of the suit land, with the 2nd and 3rd Defendants destroying his fence, while the 1st Defendant through its County Surveyor informing him to stop construction thereon, despite receiving approvals through its various departments.

The Plaintiff stated that he conducted an official search and confirmed the vendor was indeed the owner of the suit land, before he purchased it. Section 34 and 35 (1) and (2) of the **Land Registration Act** provides as follows:

'A person who requires an official search in respect of any parcel, shall be entitled to receive particulars of the subsisting entries in the register, certified copies of any document, the cadastral map, or plan filed in the registry upon payment of the prescribed fee.

Section 35 ' (1) Every document purporting to be signed by a Registrar shall, in all proceedings, be presumed to have been so signed unless the contrary is proved.; (2) Every copy of or extract from a document certified by the Registrar to be a true copy or extract shall, in all proceedings, be received as *prima facie* evidence'

I note that the 1st Defendant vide their letter dated the 2nd September 2014, (exhibit '8') notified the plaintiff that after investigation, they made a decision that the suit land belonged to him as the bona fide allottee. In relying on the above facts and legal provisions, and since the evidence of ownership has not been controverted by the Defendants I find that the Plaintiff is indeed the legal proprietor of the suit land.

Whether the Defendants and or their agents/servants should be permanently restrained from trespassing and or claiming ownership of the suit land.

It is the Plaintiff's contention that the 1st Defendant asked him to stop construction on the suit land despite approving his building plans while the 2nd and 3rd Defendants destroyed his fence and interfered with his quiet possession. Article 40 of the Constitution guarantees every persons right to property. It protects a person from being arbitrarily deprived of his property by the state or a person. The 1st Defendant after investigation however confirmed the Plaintiff was the bona fide allottee of the suit land. The 2nd and 3rd Defendant failed to adduce any evidence to controvert the Plaintiff's allegation of their interference with the suit land.

In the case of **Ahmed Ibrahim Suleiman and Another vs. Noor Khamisi Surur (2013) eKLR** Justice J.M. Mutungi stated that '**the Plaintiff having been registered as proprietor and having been issued with a certificate of lease over title No/ Nairobi/Block 61/69 are in terms of section 26(1) of the Land Registration Act entitled to the protection of the law**'.

I am persuaded by the case and find that the Plaintiff is indeed entitled to be protected by the law

Further I find that since the Defendants did not controvert the Plaintiff's claim over ownership of the suit land and in being persuaded by the case of **WILLY KIPSONGOK MOROGO v ALBERT K. MOROGO (2017) eKLR** where the Court held as follows: '**the evidence on record shows that the suit parcel of land is registered in the names of the Plaintiff and therefore is entitled to the protection under sections 24, 25 and 26 of the Land Registration Act.**', I find that it would be proper if the Defendants were restrained from claiming ownership and or interfering with the Plaintiff's quiet possession of his property.

Who should bear the Costs of the suit?

Costs generally follow the event, and in this instant case I do award the plaintiff the costs of this suit.

All the evidence provided by the Plaintiff was uncontroverted since the 2nd and 3rd Defendant failed to file a Defence while the 1st Defendant filed a Defence after interlocutory judgement had already been entered. In the case of **Janet Kaphiphe Ouma Vs Marie Stopes International (Kenya) HCCC No. 68 of 2007** Justice Ali Aroni held that: ' **In this matter, apart from filing its statement of defence, the Defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st Plaintiff and that of the witness remain uncontroverted and the statement in their Defence therefore remains mere allegations.... Section 107 and 108 of the Evidence Act are clear that he who asserts or plead must support the same by way of evidence.**'

It is against the foregoing, I find that the Plaintiff has proved his case on a balance of probability and proceed to enter judgment in his favour and make the following final orders :-

- a) That a declaration be and is hereby issued, that as against the defendants, the plaintiff is the owner of plot No. 1945/Business – IL Bissil T. Centre.
- b) A permanent injunction be and is hereby issued restraining the Defendants jointly and severally from trespassing, laying claim and or interfering with the Plaintiff's quiet possession of the property known as plot No. 1945/Business – IL Bissil T. Centre.
- c) The costs of the suit are awarded to the Plaintiff.
- d) Interest on (c) above at Court rates

Dated signed and delivered in open court at Kajiado this 1st day of February, 2018.

CHRISTINE OCHIENG

JUDGE

Present:

CC Mpyoe

Morara holding brief for Olubayi for Plaintiff

N/A for Defendant