



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 76 OF 2015

NAHASHON MUIGAI NJENGA.....PLAINTIFF

VERSUS

- 1. IDAH NJERI**
- 2. NAOMI CHPKOSGEI**
- 3. GABRIEL WAMBETE**
- 4. JOEL AMALEMBA**
- 5. FRANCIS CHEGE**
- 6. AGNES CHEPCHUMBA**
- 7. TUBULA NDIEMA**
- 8. JULIUS MASIKA**
- 9. WILSON JUMA**
- 10. SAMMY JUMA**
- 11. DAVID MURIMA**
- 12. JAMES MUTURI**
- 13. IRENE ONYANGO.....DEFENDANTS**

JUDGMENT

Introduction

1. The plaint dated 3/6/2015 in this matter seeks an order of eviction to issue against the defendants, the removal of all their illegal structures on all that land known as **LR No. Kitale Municipality block 15/Koitogos/3708**, a permanent injunction to restrain the defendants or their agents from trespassing upon the suit land and costs of the suit.

The Plaintiff's Case

2. The plaintiff's case is that the defendants trespassed on the suit land, of which he is the registered proprietor and erected structures thereon without his permission. He avers that he is an innocent purchaser for value of the suit land and despite his demands to the defendants to vacate the suit land, they have neglected or refused to do so.

The Defendants' Defence

3. The 4th, 7th, 8th and 9th defendants filed their joint defence on 9/7/2015. Their defence is mainly a general denial of the plaintiff's claim. However they also allege that they have been tenants on the suit land for more than 10 years and the plaintiff's claim of invasion is incorrect.

4. In response thereto, the plaintiff has in his reply to defence denied having ever had any dealings with the 4th, 7th, 8th and 9th defendants. I must state that at the time of the filing of the said defence the 4th, 7th, 8th and 9th defendants were acting in person.

5. Later, however, on 4/4/2016, the Law firm of Karanigrey & Co. Advocates filed a Notice of Appointment of Advocates on behalf of all the defendants dated 4/4/2016. On 3/10/2017, the Law firm of Teti & Co. Advocates filed a Notice of Change of Advocates signifying that it was coming on record for all the defendants in this suit.

6. The hearing of this matter took place on 3/10/2017. Only the plaintiff testified in this case. The plaintiff exhibited to the court his original title deed to the suit land and a certified copy was duly tendered as evidence in the matter. The plaintiff averred that he purchased the suit land from one Hellen Chemeli Kenduiwa for the consideration of Kshs.1,400,000/=.

7. However when the plaintiff was shown the land he was informed that the defendants were ordinary tenants. He asked the defendants to vacate the plot after he purchased it but they refused and told him that they do not know him and that they only recognized Hellen the seller, hence this case.

8. The defendants never gave any evidence in the matter and the plaintiff's evidence went uncontroverted. The plaintiff has demonstrated that he owns the suit land. **Section 24** of the **Land Registration Act 2012** states as follows:

24. Interest conferred by registration Subject to this Act-

(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

9. The defendants, despite being granted opportunity to do so, failed to produce any evidence of their claim to the land in any capacity whatsoever. I therefore find that the plaintiff has proved his case. Being a registered owner his rights under **Section 24 (a)** of the **Land Registration Act** have not been challenged by the defendants.

10. I find that the defendants have shown no right to be on the plaintiff's land. I therefore enter judgment in favour of the plaintiff against the defendants jointly and severally in terms of prayers Nos. **(a), (b)** and **(c)** of the plaint dated **3/6/2015**.

It is so ordered.

Dated, signed and delivered at Kitale on this 20th day of March, 2018.

MWANGI NJOROGE

JUDGE

20/3/2018

Coram:

Before - Mwangi Njoroge - Judge

Court Assistant - Picoty

Ms. Sitati holding brief for Arunga for plaintiff

N/A for the defendant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

20/3/2018