



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO.126 OF 2016

HUMPREY STEPHEN OGAWA.....PLAINITFF

VERSUS

MIRIAM AYISI.....1ST DEFENDANT

SARA ATIENO.....2ND DEFENDANT

DIANA ACHIENG.....3RD DEFENDANT

EUNICE ATIENO.....4TH DEFENDANT

SELA ATIENO.....5TH DEFENDANT

POLICAP ODHIAMBO.....6TH DEFENDANT

CHARLES OCHIENG.....7TH DEFENDANT

J U D G M E N T

1. **Humphrey Stephen Ogawa**, the Plaintiff, filed this suit through the plaint dated 12th May 2015 seeking for eviction and permanent injunction orders over land parcel **Kisumu/Manyatta 'A'/1750**, against **Miriam Ayisi, Sara Atieno, Diana Achieng, Eunice Atieno, Sela Atieno, Polycarp Odhiambo and Charles Ochieng**, hereinafter referred to as the 1st to 7th Defendants respectively. The Plaintiff also seeks for costs and interests. The Plaintiff avers that he is the registered proprietor of the suit land. That the 1st Defendant without the Plaintiff's authority or consent entered onto the land in 2010, constructed some structures thereon, which he leased to the 2nd to 7th Defendants and hence this suit.

2. That the hearing of the suit took place on the 5th December 2017, with Mr. Kowinoh Advocate representing the Plaintiff who testified as PW1. The Plaintiff told the court that he bought the land from Findicus Onyuna in 1973 and it was registered in his name after adjudication. That the County Council had raised objection to his registration with the land which dispute went up to the minister on appeal and the ruling was in his favour. The Plaintiff produced a copy of the title deed issued on 21st August 2009, and certificate of official search dated 28th November 2013 over land parcel **Kisumu/Manyatta 'A'/1750** confirming his proprietorship.

He also produced a copy of the Minister's appeal proceedings in appeal No.89 of 1994, in which the Municipality of Kisumu was the Appellant and the Plaintiff herein the Respondent. The proceedings shows that the appeal was not successful and from the statement attributed to the Appellant [John Mibei], the plot was to be retained by the Respondent [Humphrey Stephen Ogawa].

3. The following are the issues for the court's determination;

- a) Whether the Plaintiff has shown that the Defendants have no legally recognized rights or claim over the suit land.
- b) Whether the eviction and permanent injunction orders should issue.
- c) Who pays the costs.

4. The court has carefully considered the pleadings filed by the Plaintiff, oral and documentary evidence tendered by PW1 and come to the following determinations;

- a) That land parcel **Kisumu/Manyatta”A”/1750** was first registered on the 23rd November 1995 in the name of Humphrey Stephen Ogawa, the Plaintiff, as confirmed by the copy of the certificate of official search.
- b) That the registration of the suit land in the name of the Plaintiff was objected during adjudication to by the Municipal Council of Kisumu. That the objection proceedings was undertaken and ruled in favour of the Plaintiff. That the Municipal Council of Kisumu then filed an appeal with the Minister which was decided on 20th December 2004 in favour of the Plaintiff as per the availed copy of the proceedings.
- c) That consequently, the Plaintiff was issued with a title deed over the land on the 21st August 2009 as confirmed by the copy of the title deed.
- d) That the Defendants did not enter appearance or file any defence to the Plaintiff’s claim and the Plaintiff’s averment remains unchallenged and or uncontroverted. That the Plaintiff has shown that he is the duly registered proprietor of the suit land and under **Section 26 of the Land Registration Act No.6 of 2012**, he is the indefeasible and absolute owner of the said land.
- e) That as the Defendants occupation and use of the said land is without the Plaintiff’s authority and or consent, and they have not shown that they so occupy or use the land on the basis of any legally known or recognized right, the court find that they are trespassers. That therefore the Defendants need not only to be evicted from the suit land, but also to be injuncted from interfering with the Plaintiff’s use of the same.

5. That flowing from the above, the court finds that the Plaintiff has proved his case against the Defendants on a balance of probabilities and orders as follows;

- a) That the Defendants, who are trespassers on land parcel **Kisumu/Manyatta”A”/1750**, do give vacant possession of the said land to the Plaintiff in ninety (90) days after service of a copy of this order upon each one of them, and in default eviction order to issue.
- b) That upon the Defendants giving vacant possession or being evicted from land parcel **Kisumu/Manyatta ‘A’/1750**, they be permanently injuncted from re-entering or in any other way interfering with the Plaintiff’s possession and use of the said land.

Order accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

Dated and delivered this 14th day of March 2018

In presence of;

Plaintiff Absent

Defendants Absent

Counsel Mr. Anule for Kowinoh for Plaintiff

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/3/2018

14/3/2018

S.M. Kibunja judge

Joane Court assistant

Parties absent

Mr. Anule for Kowinoh for the Plaintiff

The Defendants are absent.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/3/2018

Court: The Judgment dated and delivered in open court in the presence of Mr. Anule for Kowinoh for the Plaintiff.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/3/2018