



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

ELC NO. 313 OF 2016

MARGARET WANJIRU WACHIRA.....PLAINTIFF

VERSUS

KIMANI NJAGUA.....DEFENDANT

JUDGMENT

(Suit seeking declaration over ownership of land and eviction of defendant; plaintiff displaying that she has title to the land; defendant also claiming title to the same land; defendant's title deed showing that it was issued in the year 1997 but under the Land Registration Act of 2012; apparent that defendant's title is fraudulent; judgment entered for the plaintiff)

1. This suit was commenced on 9 August 2016 by way of a plaint. In her plaint, the plaintiff pleaded inter alia that she is the registered owner of the land parcel Nakuru/Kapsita/617 (hereinafter referred to as "the suit property"). She averred that she has been leasing out this land to several persons including the defendant, whose lease was not renewed for the year 2016. It is averred that around December 2015, the defendant claimed that he is the owner of the suit land, and in June 2016, he started putting up a semi-permanent structure which act prompted the plaintiff to file this suit. In the case, the plaintiff wants the defendant permanently restrained from the suit land alongside costs of the suit.

2. The defendant filed defence vide which he asserted that he is the one who is the proper owner of the suit land and contended that the suit land was allocated to him in the year 1997.

3. In her evidence, the plaintiff testified that she resides in Nyandarua and Kajiado and she therefore leases out the land. She produced the title deed of the suit land to prove her ownership. She stated that she left the land in the hands of one Amos Mirau and he is the one who informed her that the defendant was claiming the land. She went to the site and found the defendant putting up a temporary structure after which she filed this suit.

4. PW-2 was Amos Mirau Karanja. He testified that the plaintiff left the land for him to oversee from the year 1997 and he used to lease it out on her behalf from the year 2007. He testified that one of the lessees was the defendant who started leasing out the land in the year 2012. There were complaints by other lessees that the defendant was harassing them, and in the year 2015, he opted to terminate his lease. Later, the defendant came to the land claiming to own it.

5. PW-3 was Paul Maina. He is one of the persons who used to lease the suit land for cultivating food crops. He affirmed that the defendant was also one of the lessees of the land. He testified that in the year 2015, the defendant accompanied by some County personnel, came to the land and told him to leave immediately or be arrested. Since then, he has been unable to cultivate his crops.

6. In his defence, the defendant testified inter alia that he was given the land by retired President Moi in the year 1997 and that he has been using it since then. He testified that after allocation, he put up a grass thatched structure and lived there with his family. Because of the clashes of 2007 (presumably the post-election violence of 2007/2008), he moved his wife and children to Elburgon and his house was burnt. He did not develop any other structure until the year 2016, and before he could complete it, he was sued. He produced his title deed in evidence to prove his ownership of the land.

7. DW-2 was one Stephen Karanja Kamau who stated that he was a "nyumba kumi" village elder. He testified that the defendant came to the land in the year 1997 and cleared it. He then built his house which was burnt down in the year 2007. He testified in cross-examination that he has never seen the plaintiff on the land, and that PW-2 and PW-3, are neighbours who are not concerned with the land.

8. With the above evidence, the parties closed their respective cases and I invited both counsel for the plaintiff, and the defendant who is acting in person, to file submissions which they duly did. I have taken note of these in arriving at my decision.

9. It is apparent that both plaintiff and defendant claim the suit land. They both produced what they consider to be their title deeds to the suit land and called witnesses to support their claim to possession of the land. The single issue to be determined is who among the plaintiff and

defendant has proved ownership of the suit land.

10. I have compared the title deeds produced by the plaintiff and defendant and I have no doubt in my mind that it is the plaintiff who is holding the genuine title deed. Her title deed shows that it was issued on 16 July 1997 under the Registered Land Act, Cap 300, Laws of Kenya (now repealed). The title deed appears properly issued and signed by the Land Registrar. I have compared this title deed with what the defendant purports to be his title deed which he claims to be genuine. The defendant's title deed shows that it was issued on 16 July 1997 but under the "Land Registration Act (No. 3 of 2012, Section 108)" and "Registered Land Act (Chapter 300) (REPEALED)". It also shows that the first registered proprietor is one Ejido Gakuo Mutahi who got registered as proprietor on the same day, that is 16 July 1997, and again on the same day, the defendant and one Isaac Kamau, got registered as proprietors and title deed was issued again on the same day. Now, in the year 1997, there was no statute known as the Land Registration Act. The Land Registration Act, Act No. 3, of 2012, is a 2012 statute which had not even been contemplated in the year 1997. It cannot be said that in the year 1997, a title deed could be issued bearing this 2012 statute. Moreover, if it is the case of the defendant that he was allocated the land by President Moi, you would expect that being the first allottee, he would be the first registered owner, or at least the second registered owner after the Government. But in his title deed, the first registered owner is not the defendant but a stranger. I have no doubt that the defendant's title is a forgery and the defendant cannot rely on it to prove ownership of the suit land.

11. I am persuaded on a balance of probabilities that as between the plaintiff and defendant, it is the plaintiff who is the genuine owner of the suit property. As owner, the plaintiff is exclusively entitled to all rights of ownership including the right of use, ingress and egress. The defendant does not have the permission of the plaintiff to be on the suit land and he must therefore stay away from it. The plaintiff is certainly entitled to the order of permanent injunction as sought.

12. I now make the following final orders :-

(i) That as between the plaintiff and defendant, it is the plaintiff who is the genuine owner of the land parcel Nakuru/Kapsita/617.

(ii) That an order of permanent injunction is hereby issued against the defendant, restraining him from entering, being upon, cultivating, putting up any structures, or in any other way use or interfere with the plaintiff's use and possession of the land parcel Nakuru/Kapsita/617.

(iii) The plaintiff shall have the costs of this suit as against the defendant.

13. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 26TH day of April 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Ms. Gikonyo instructed by M/s Rubua Ngure & Co. Advocates, for the plaintiff.

Defendant present acting in person.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU