



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**

**ELC NO. 451 OF 2017**

**PAULINE WANJIKU NDEGWA.....PLAINTIFF**

**VS**

**MARGARET MAGIRI MWANGI.....DEFENDANT**

**JUDGMENT**

1. The Plaintiff through a plaint dated 05.09.2017 filed on even date sued the Defendant for illegally putting up structures on the Plaintiff's property and has sought the following reliefs;

a. An order of eviction do issue against the Defendant, his family members, employees, agents and whomsoever claiming under him to vacate from the suit property No. MAKUYU/MAKUYU BLOCK II/1286

b. Costs of the suit.

2. The Plaintiff claims a proprietary right over all that parcel of land known as Makuyu/Makuyu/Block II/1286 measuring approximately 0.028 ha ("herein referred to as the suit land"). The Plaintiff claims that she is the registered and absolute owner of the suit land having purchased the same and issued with a title deed on 23.03.2016.

3. The Defendant was duly served with the summons and plaint herein; subsequently the Defendant entered appearance through counsel on record but failed to file any defence to the claim. Consequently interlocutory judgment was entered against the Defendant on the 13.2.18 and the matter proceeded for formal proof. The Plaintiff's claim is therefore uncontroverted.

4. The Plaintiff testified that she is the registered owner of the suit land having purchased the same from the Gathaita Farmer's Sacco Society in the year 2016. That upon the purchase the suit land was delivered to her in vacant possession and was issued with a title deed to the suit land on 23.03.2016. That later in the month of June 2017 when she visited the suit land she found that the Defendant had illegally encroached onto her land by constructing some semi permanent structures as well as tilling the land. That the Defendant is still in occupation of the suit land. That the Defendant ignored her demand letter to vacate the suit land issued to her through the Plaintiff's advocates. That the land is not fenced. The Plaintiff produced a copy of title deed which shows that the suit land in her name, copy of official search dated 06.02.2018 and demand letter issued to the Defendant dated 16.06.2017 in support of her claim.

5. The Plaintiff's claim is based on proprietorship of the suit land and entitlement to the rights in respect to ownership of land. She has produced documentary evidence in form of a title deed over the suit land in her name as proof of ownership.

6. Section 24 of the Land Registration Act No 3 of 2012 states that 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. Section 25 of the said Act provides that the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of Court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—to encumbrances charges or leases shown on the register and the overriding interests as stated in section 28 of the Act.

7. Section 26 of the Land Registration Act, 2012 provides;

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme

8. The Courts are therefore mandated by statute to consider a title document as prima facie evidence of ownership to land and a conclusive evidence of proprietorship to land that can only be challenged on grounds stipulated as above. In the present case the title produced by the Plaintiff shows that the suit land is registered in her name. That position was not challenged by the Defendant in fact the Defendant failed to file any pleadings in opposition to the claim either in person or through his counsel on record. It would be concluded that the Defendant had no good defence to the Plaintiff's claim.

9. Among the rights to be enjoyed by a registered owner of any land is the right for peaceful and quiet enjoyment of the land he owns, in other words the rightful owner to land has a right to possession, occupation and use of the suit land. The Plaintiff conducted evidence that shows that the Defendant has illegally taken possession of the suit land and is utilizing it for his own benefit, those actions amount to violation of the Plaintiffs right enjoyment of title must be stopped. It is the Plaintiffs case that the Defendant's occupation of her land is without her consent or legal basis. The Defendant though represented by Counsel on record failed to rebut the claim.

10. The dispute herein involves ownership of a parcel of land, and the specific prayer sought by the Plaintiff in the Plaint filed herein is for eviction orders to issue against the Defendant. These are clearly orders relating to the use, occupation and title to land and within the jurisdiction of this Court.

11. Having found that the Plaintiff has proven her claim on a balance of probability the Court makes the following orders;

a). The Defendant by herself, family members, employees, agents and whomsoever claiming under her to vacate the land Makuyu/Makuyu/Block II/1286 within the next 60 days and in default eviction to issue in accordance to the provisions of the law.

b). The costs of the suit to be met by the Defendant.

**DELIVERED, DATED AND SIGNED AT MURANG'A THIS 31<sup>ST</sup> DAY OF MAY 2018**

**J.G. KEMEI**

**JUDGE**