



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 448 OF 2017

MARGARET NJERI GATHU.....PLAINTIFF

VS

ANTHONY GITHAIGA KABARU.....DEFENDANT

JUDGMENT

1. The Plaintiff claims a proprietary right over all that parcel of land known as Makuyu/Makuyu/Block II/1280 measuring approximately 0.028 ha (referred to as the “suit land”). She avers that she is a registered owner of the suit land having purchased the same and was issued with a title deed on 17/3/16.

2. The Plaintiff has sued the Defendant and prays for judgment against the Defendant for 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 land
- b. Costs of the suit

3. Brief facts of the Plaintiff’s claim against the Defendant is that sometimes in June 2017 the Defendant illegally entered the suit land and constructed structures thereon without her knowledge and consent. That the Defendant has continued to remain in occupation of the suit land and has been cultivating the land illegally. That the Defendant has failed to vacate from the suit land despite being asked to do so by the Plaintiff.

4. The Plaintiff prays for eviction of the Defendant from the suit land, demolition of all his structures thereon and a permanent injunction restraining the Defendant from trespassing onto the suit land henceforth.

5. The Defendant’s counsel filed a notice of appointment dated 21/11/17 on same date. No further documents were filed by the Defendant in defence to the suit hence interlocutory judgment was entered against the Defendant and the matter proceeded for formal proof.

6. The Plaintiff testified that the suit land belongs to her. That she purchased the same from the Sacco Society and was issued with a title deed on 17/3/16. That sometimes in June 2017 she went to inspect the suit land and found that someone had constructed some semi permanent structures on the suit land and was tilling the land. She later learnt that it was the Defendant. That the Defendant is still in occupation of the suit land. That the Defendant ignored her demand letter issued to him through the Plaintiff’s advocates dated 16/6/17. That when she purchased the suit land from the Sacco Society and she was given vacant possession of the suit land and at that time the land was vacant. That the land is not fenced. She produced a copy of title deed which shows that the suit land is owned jointly by herself and one Monica Wanjiru Gathu.

7. It is to be noted that the suit land is jointly owned but the Plaintiff has not spoken about the co-owner. The Plaintiff has not stated if she has brought the claim on her own behalf only or jointly with that of the co-owner. 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. In my view that would not disentitle her to defend the right to title in the suit land.

8. 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.

9. 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

10. 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.

11. 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 of the defendant amount to violation of the Plaintiffs right and 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.

12. Having found that the Plaintiff has proven his claim on a balance of probability and established that the Defendant has no legal right to remain on the suit land based on the evidence placed before this Court, the Plaintiff's claim succeeds and the Court makes the following orders;

a) The Defendant by himself, family members, employees, agents and whomsoever claiming under him to vacate the land Makuyu/Makuyu/Block II/1280 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 31ST DAY OF MAY 2018

J.G. KEMEI

JUDGE