



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO 172 OF 2017

DOUGLAS KARIUKI - PLAINTIFF

VS

FRANCIS IREGI MWANGI - DEFENDANT

JUDGMENT

1. The Plaintiff sued the Defendant through a plaint dated 27/6/13. The Plaintiff claims a purchaser's interest over all that parcel of land known as Block 2/762 and Block 2/748 within Kiharu Estate Murang'a town within Murang'a County ("herein referred to as the suit premises'). He seeks the following reliefs:

- a. Eviction
- b. Damages, mesne profits plus costs and interest.

2. It is the Plaintiff's case that he purchased the suit premises in the year 2004 from one Caroline Wangu Maina who was a minor through her representative Peter Mwangi Maina for a price of Ksh.300,000/= and the suit land was delivered to him in vacant possession. That though the suit land is located away from where the Plaintiff resided, he was later informed in the year 2005/8 that the Defendant, then unknown to him had encroached on the suit land and built a temporary shelter made of iron sheets. That the Plaintiff confronted the Defendant and orally asked him to vacate the suit premises but the Defendant was adamant. That later in the year 2012 the Defendant demolished the temporary house on the suit premises and hurriedly constructed a permanent house therein. The Plaintiff claims to have engaged the local authority at the Municipal Council of Murang'a to help him evict the Defendant to no avail. He claims that the Defendant is an employee of the County Government hence his colleagues were shy to evict him but avers that he was advised by the council officers that the Defendant did not have documents of ownership to the suit premises.

3. The Defendant entered appearance on 23/7/13 and filed his statement of defence on 22/8/13. In his defence the Defendant denies the allegations in the plain and avers that he is the rightful owner of the suit premises in which he resides. It is the Defendant's claim that the plots No.Block/2/762 and Block/2/748 do not exist and admits he occupies House No. MCC/SR/1/1-2 which he alleges to have purchased from the Murang'a County Council in the year 2000 after winning a tender price space vide receipt dated 16/3/2000 for a purchase value of Ksh.150,000/=. It is his claim that at the time of purchase the suit property consisted of a 3 rooms house block. He claims that the suit land has never been the property of the Municipal Council of Murang'a as stated by the Plaintiff instead the original owner was Murang'a County Council. He annexed to his defence a copy of House report and purchase documents for Murang'a County Council House No.MCC/SR/1/1-2 dated 16/3/2000 and approval letter from Murang'a County Council dated 23/6/2005 for house No. MCC/SR/1/1-2.

4. The Plaintiff countered those averments in his reply to defence and states that the evidence tendered by the Defendant relates to the year 2000 when the area in which the suit premises are situated was within the jurisdiction of Municipal Council of Murang'a which had succeeded the County Council of Murang'a in 1982. That from the land map of that area there was no house on the suit premises and in fact the stated house was in a far away location. The Plaintiff avers that the Defendant's evidence in his defence is based on fraud and documents presented are forged and prayed for the same to be struck out.

5. This case was initially filed in High Court at Nyeri and later transferred to this Court in the year 2017. The matter was adjourned twice for reason that counsel for the Defendant intended to file an application to cease acting, on his third attempt to seek an adjournment the same was declined as no application was not on record.

6. The Plaintiff testified that he had purchased the suit premises comprising of the two plots and produced the following documents in support of his claim;

- a. Rates payment receipts (various dates for both plots between the year 2010 – 2013).
- b. Allotment letter dated 9/6/98 for plot No.2/748 and allotment letter for plot No.2/762.

- c. Transfer of urban plots dated 31/12/2012 for plot No. 2/762.
- d. Letters of consent for transfer dated 20/2/2013 and 18/2/2013 for block 2/748 and block 2/762 respectively.
- e. Search certificate for block 2/748 dated 26/9/2012.
- f. Demand letter dated 16/5/2013 addressed to the Defendant directing him to vacate the suit premises.
- g. Sale agreement dated 26/10/2004 in respect to the two plots having been purchased by the Plaintiff from Caroline W. Maina through her guardian James Maina Mwangi.

7. In Cross examination the Plaintiff stated that he entered into an agreement with the guardian of Caroline Maina one Peter Mwangi Maina who was present at the Advocates office for signing of the agreement. He was unaware that Peter Mwangi was arrested and charged for fraud and interdicted from the Municipality. That he had not been issued with the lease yet. He confirmed the suit land is situated in Kiharu. He stated that the vendor did not sign the agreement. And further stated that he bought the suit land in 2013 when it was undeveloped and in vacant possession and later in 2014 the Defendant encroached on it. That he was not allotted the suit land initially but had purchased it and that he did not do a search before purchasing.

8. The Plaintiff in his submissions faults the Defendant for failing to attend Court throughout from when the matter was in Nyeri until when it was heard to conclusion and even questions under whose instructions the Defendant's advocate was acting. He avers that he has provided weighty evidence to prove his ownership of the suit land in form of original documentary evidence produced in Court whilst the Defendant submitted none. He is of the view that he has proved his case satisfactorily on a balance of probabilities.

9. The Plaintiff's case is that he purchased the suit land consisting of two plots namely Block No. 2/748 and Block no. 2/762 which were in vacant possession at time of purchase but the Defendant later entered into the suit land took possession of the same by constructing a temporary structure and later a permanent structure. It is not clear if the Defendant entered the suit land in the year 2005, 2008 or 2014 as the Plaintiff has given various sworn statements over the year of entry. The Plaintiff has tendered documentary evidence in support of the purchase and transfer of the land to himself including a sale agreement between himself and the original owner of both plots, transfer forms in his favour and letters of consent to the transfer and rates payments receipts for both plots all in original documents that seem authentic. He also produced a search certificate dated 26/9/2012 which showed that the suit land was owned by the vendor named in the sale agreement. These documents were not challenged in cross examination by counsel for the Defendant save for the date when the purchase of suit land was done. Though the sale agreement on record is dated 26/10/2014 it appears that all other transactions including the search, transfer, consent and payment of rates begun around 2010 – 2013.

10. The Defendant on his part never attended Court at the various dates it came up in Court, his advocate seemed to not have proper instructions through the proceedings as he on several occasions indicated his intention to withdraw from acting and he failed to attend the final hearing. The Defendant did not come to defend the suit in oral evidence as per his defence despite being duly served and given ample time to attend Court. The Plaintiff's case is therefore not controverted.

11. In the present case the Plaintiff has not produced an original lease in his name though the consent forms produced seem to have authorized issuance of the same, however I note it is in the same year that the consent was obtained that this matter was filed in Court. The other documents produced in support of the claim in regard to the purchase and transfers are in strong support of the acquisition of proprietary rights over the suit land by the Plaintiff.

12. The letters of allotment to the suit land are dated the 9.6.1998. There are minutes of the then Municipal Council of Muranga approving the transfer of the suit lands from the previous allottees to the Plaintiff. A transfer of urban plots document is on record executed and uncontroverted. The said Council wrote a letter to the Commissioner of Lands on 18.2.2013 confirming the ownership of the suit land to the Plaintiff. There rates payment receipts evidencing payment of rates to the County Government of Muranga on record. All these documents have not been challenged by the Defendant.

13. In contrast the Defendant produced a house report on various houses wherein he expressed interest at the end of the report in house no. MCC/SR/1/17 and offered Kshs 150,000/ for the same. On 23.6.2005 the said council confirmed to him that he had fulfilled the conditions of sale of the said house and he should formalize with the Commissioner of lands for issuance of title. No minutes of the Council has been tabled. No evidence of such purchase or transfer of the suit land was produced. In the absence of documentary evidence there is doubt whether indeed there was an allotment, sale and or transfer to the Plaintiff. There is no certainty whether indeed House reference No MCC/SR/1/17 refers to the suit land. In any event by the time the Defendant is allegedly being allotted the house in 2000, (if it is assumed that it refers to the same land) the suit land had been allotted to the predecessors of the Plaintiff. There is no evidence that the earlier allotments were revoked. The first in time therefore succeeds. Therefore the Council had nothing to allot in the year 2000. This raises doubt as to the authenticity of the allotment of the Defendant as alluded to in the letter dated the 23.6.2005. The documentary evidence presented by the Plaintiff is cogent and believable in support the Plaintiffs claim.

14. Having determined that the suit property belongs to the Plaintiff, it is clear that the Defendant is occupying the same without the permission of the Plaintiff.

15. As regards the Plaintiffs claim for mesne profits, the Plaintiff has not led any evidence before the Court in support of the damages suffered on account of trespass nor the quantum of mesne profits payable. The Court is unable to make a determination on this.

16. In the upshot the Plaintiff's claim succeeds and the Defendant is hereby ordered to vacate the suit property within the next 60 days from the date hereof and in default eviction to issue as per the provisions of the law.

17. Costs in favour of the Plaintiff.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 17TH DAY OF MAY 2018.

J G KEMEI

JUDGE