



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 155 OF 2015

WILSON NDIRANGU MURUTHI.....PLAINTIFF

VERSUS

CHARLES SAMERI MUKURIA.....DEFENDANT

JUDGMENT

(Suit by the plaintiff claiming possession of certain land; plaintiff having title to the suit land; defendant entering it and developing structures; no defence filed by defendant and no evidence by the defendant to justify his occupation of the suit land; judgment entered for the plaintiff; defendant inter alia ordered to vacate the suit land).

1. This suit was commenced by way of a plaint which was filed on 5 June 2015. In his plaint, the plaintiff has pleaded that he is the registered owner of the land parcel Kijabe/Kijabe Block 1/3757. He pleaded that he obtained title by virtue of being a member in Mai Mahiu Kijabe Longonot Company Limited and he was issued with his title deed on 22 May 1985. He pleaded that he went to check on his land in the year 2015 and found that the defendant has illegally entered it and is in occupation of it. It is his position that the defendant is a trespasser and he has asked for orders that he be declared the owner of the suit land; a permanent injunction restraining the defendant from the suit land; a mandatory injunction compelling the defendant to demolish and remove the structures on the suit land and in default an eviction order do issue.

2. The defendant entered appearance and filed a reply to an application for injunction that had been filed by the plaintiff alongside the suit, but he did not file any defence. Neither did he nor his advocate appear at the hearing of the suit despite being duly served.

3. The plaintiff testified and called a surveyor as his witness. The plaintiff is a retired civil servant and lives in Nakuru town. He stated that in the year 1981, he purchased one share from Mai-Mahiu Kijabe Longonot Company Limited after which he was issued with a share certificate. In the year 1984, he participated in the balloting process and was allocated the suit land. He was later issued with title to it. He however did not occupy the land. In the year 2010 he went to check on the land and it was okay. In the year 2015 he visited the land and found the defendant occupying it and he had developed some structures. He engaged a surveyor who confirmed to him that the defendant was occupying his land.

4. The plaintiff called a surveyor, one John Mwago, as his witness. He testified that he received instructions from the plaintiff to identify the suit land on the ground. He made a report which shows that the defendant is occupying the plaintiff's land. He noted that the plot is well developed with a barbed wire fence, a steel gate, and grevillea trees planted along the boundary. There is also developed a permanent structure with iron sheets, a poultry structure, and an orchard full of mature orange and mango trees.

5. As I have mentioned, the defendant did not appear at the hearing of the case and the only evidence that I have is that of the plaintiff. An analysis of the evidence reveals that indeed, the plaintiff is the registered owner of the suit property. He explained that he obtained the suit property after a balloting process and he was later issued with title. I have seen the title deed held by the plaintiff, the green card, and the search certificate, which the plaintiff produced as his exhibits. They demonstrate that it is the plaintiff who is the rightful proprietor of the suit land. I observe that he became registered as proprietor and was issued with title on 7 May 1985. All this evidence is not controverted by the defendant. From the same, I have no doubt in my mind that it is the plaintiff who is the rightful proprietor of the suit property. Being the proprietor, he is the only person entitled to rights over the suit land which are protected by Section 24 and 25 of the Land Registration Act, Act No. 3 of 2012. The said provisions of the law provide as follows :-

Interest conferred by registration.

24. Subject to this Act—

(a) 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; and

(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25. (1) 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—

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

6. Being the registered proprietor, it is only the plaintiff who has the rights of use and occupation of the same. He also holds the rights of ingress and egress. The defendant has not come to court to explain why he developed the plaintiff's land and has not tabled any reasons to demonstrate that he has rights over the suit land. That being the position, the plaintiff's suit against the defendant must succeed. The defendant must move out of the suit land within 30 days, and must, within this period of time, restore the land to its vacant state or in a state that is agreeable to the plaintiff. If he does not comply, and the plaintiff proceeds to enforce this order, the defendant will bear the costs of his own eviction and the costs of restoring the land. The defendant will also bear the costs of this case.

7. Before I close, I do recall that when dealing with the application for injunction, it emerged that the defendant was facing a criminal charge of Forcible Detainer in the case Naivasha Magistrates Court Criminal Case No. 722 of 2015. I issued orders staying that case until this suit is heard and determined. I have now determined this case and having held that the defendant has no right over the suit land, I lift the stay of the said suit and the same may be continued to its logical conclusion.

8. I now make the following final orders :-

(i) That as between the plaintiff and the defendant it is hereby declared that it is the plaintiff who is the rightful proprietor of the land parcel Kijabe/Kijabe Block 1/3757.

(ii) That it is hereby declared that the defendant is a trespasser in the said land parcel Kijabe/Kijabe Block 1/3757.

(iii) That the defendant is hereby granted 30 days to remove himself and all his developments from the said land parcel Kijabe/Kijabe Block 1/3757 and restore the said land to its pre-development state or to such state as may be agreed by the plaintiff.

(iv) That in default of the above, the plaintiff is at liberty to evict the defendant and keep or remove all the developments therein as he may wish and any costs incurred to be passed over to the defendant.

(v) That upon his eviction and/or removal a permanent injunction is hereby issued barring the defendant from the land parcel Kijabe/Kijabe Block 1/3757.

(v) That the order of stay of proceedings of the case Naivasha Chief Magistrate's Court criminal case No. 722 of 2015 is hereby lifted.

(vi) That the plaintiff shall have the costs of this suit.

9. Judgment accordingly.

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

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Kibet instructed by M/s Mirugi Kariuki & Co. Advocates for the plaintiff.

No appearance on the part of M/s M. Mutinda & Co. Advocates for the defendant.

Court Assistant : Nelima Janepher .

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU