



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 450 OF 2017

ARCADIUS NJORA CHEGE.....PLAINTIFF

VS

GEOFFREY MUCHIRI.....DEFENDANT

JUDGMENT

1. The Plaintiff claims a proprietary right over all that parcel of land known as Makuyu/Makuyu/Block II/1256 measuring approximately 0.028 ha “herein referred to as the suit land”. He states that he 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 him 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
- c. Any other relief the Court may deem fit to grant.

3. The brief facts of the Plaintiff’s claim against the Defendant is that sometimes in June 2017 the Defendant illegally entered the suit land and did some renovations on some building that was standing on the suit property and then he converted it to a church hall and has been using the converted church hall for his services. That the Defendant has continued to remain in occupation and use of the suit land to date. The Plaintiff avers that the Defendant has no legal justification to remain on the suit land. 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 hence forth and general damages for trespass.

5. The Defendant failed to enter appearance despite being duly served with the summons in this case and has also not filed any pleadings in opposition to the claim to date. Interlocutory judgment was then issued against Defendant

6. When the matter came up for formal proof the Plaintiff testified that he resides in Kiambu and the suit land belongs to him having purchased it from Gathaito Farmers Sacco Society in 1998 and was later issued with a title deed in March 2016. That he immediately took possession of the suit land in vacant possession after purchasing it. That he had built a house on the suit land that he left incomplete and was visiting the suit land from time to time. He produced copy of title to the suit land in his name and a copy of official search. That sometimes in June 2017 when the Plaintiff went to visit the suit land and found that the Defendant had illegally entered into the suit land and made some renovations on the incomplete house and converted the same into a church house. That the Defendant has illegally removed the beacons of the suit land. That the Defendant has been using the church hall for his services. He avers that the Defendant owns the adjacent plot and he has no legal justification to remain on the Plaintiff’s parcel of land.

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

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

26. (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

9. 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 his name. That position was not challenged by the Defendant in fact the Defendant failed to file any pleadings in opposition to the claim despite being duly served. It would be safe to conclude that the Defendant had no good defence to the Plaintiff's claim.

10. The right to ownership of land is protected by both the statute and the Constitution of Kenya. Article 40 of the Constitution of Kenya provides;

“..... every person has the right, either individually or in association with others, to acquire and own property

a) of any description; an

b) in any part of Kenya.”

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 Plaintiff's right as guaranteed in the constitution and must be stopped.

12. The dispute herein involves ownership of a parcel of land, and the specific prayers sought by the Plaintiff in the Plaint filed herein is for eviction orders to issue against the Defendant herein. These are clearly orders relating to the use, occupation and title to land and within the jurisdiction of this Court. Having established that the Defendant has no legal right to remain on the suit land based on the evidence placed before this Court.

13. 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/1256 within the next 60 days and in default eviction to issue in accordance to the provisions of the law.

b). Costs of the suit to be met by the Defendant.

It is so ordered

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 31ST DAY OF JULY 2018

J.G. KEMEI

JUDGE

Judgment read in open Court in the presence of;

Mr Kinuthia HB for Mr Bwonwonga for the Plaintiff.

Defendant – Absent

Ms.Irene and Ms Njeri, Court Assistants.