



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 162 OF 2017

KENYA SEED COMPANY LTD.....PLAINTIFF

VERSUS

BRIGID MULONGO.....1ST DEFENDANT

DAMARIS NAFULA.....2ND DEFENDANT

GODFREY MUCHUME.....3RD DEFENDANT

J U D G M E N T

1. In the plaint dated 26/9/2017 filed in this suit on 5/10/2017 the plaintiff seeks the following prayers:-

(a) A declaration that the plaintiff is the legal owner of L.R. No. 2042/6 (I.R. NO. 37964) within Trans-Nzoia County and the defendant has no claim whatsoever over the said land and an eviction order be issued against the defendants.

(b) An order of permanent injunction as against the defendants, their agents, servants and/or any persons claiming through them from trespassing, erecting, building, fencing, wasting or in any other manner interfering with the plaintiff's peaceful occupation of L.R. No.2042/6 (I.R. NO.37964)

(c) Costs of this suit.

(d) Any other relief this honourable court may deem fit and just to grant.

2. The affidavit of Jackson Nyongesa Simiyu a court process server dated 9/1/2018 was filed on 7/2/2018. It shows that service of the summons to enter appearance, plaint and other documents in the suit was effected upon the defendants on 5/1/2018. Despite that, the defendants never filed any memorandum of appearance or defence. They never appeared at the hearing when this case was listed for formal proof. The plaintiff's sole witness testified on 17/7/2018.

3. According to the plaint and the evidence of the plaintiff's sole witness one Hosea Sirma the plaintiff is the registered owner of **L.R. No. 2042/6 (I.R. No. 37964)** situate in Trans-Nzoia County; the defendants have trespassed upon the said land and constructed some structures without any consent, either express or implied from the plaintiff. Despite demands by the plaintiff that they vacate the plaintiff's land the defendants have ignored and or refused to comply. The plaintiff's claim against the defendants is for a declaratory order that the plaintiff is the legal owner of the land; that the defendants be evicted from the land and an order of a permanent injunction to restrain them or any persons claiming through them from in any manner interfering with the plaintiff's peaceful occupation from the suit land. The plaintiff's witness produced as P. Exhibit 1 a certified copy of the title to the land it shows that the land was transferred to it on 25/1/1995 as per entry No. 10 on that document. The plaintiff also produced a photograph showing some brick wall and iron-sheet roof structures built at the edge of the land which he identified as the plaintiff's. The witness testified that these are the structures that the defendants erected without permission from the plaintiff.

4. I have considered the oral evidence of the plaintiff's witness as well as the documentary evidence that he produced and I find that the plaintiff has established his case against the three defendants on a balance of probabilities.

5. I therefore enter judgment in favour of the plaintiff against the defendants jointly and severally and issue the following orders:-

(a) A declaration that the plaintiff is the legal owner of L.R. No. 2042/6 (I.R. No. 37964) within Trans-Nzoia County and the defendants have no claim whatsoever over the said land and that the defendants do remove themselves and their property therefrom in default of which they be evicted therefrom.

(b) An order of permanent injunction as against the defendants, their agents, servants and/or any persons claiming through them from trespassing, erecting, building, fencing, wasting or in any other manner interfering with the plaintiff's peaceful occupation of L.R. No.2042/6 (I.R. No.37964)

(c) The defendants shall bear the costs of this suit.

Dated, signed and delivered at Kitale on this 31st day of July, 2018.

MWANGI NJOROGE

JUDGE

31/7/2017

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga for plaintiff

N/A for the defendants

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

31/7/2018