



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MURANG'A

ELC NO. 355 OF 2017

GLADYS MWIHAKI MWANGLI.....PLAINTIFF

VS

KAMANDE WAWERU.....DEFENDANT

JUDGMENT

1. The Plaintiff filed suit on 26/4/17 against the Defendant seeking the following orders;
 - a. A permanent injunction restraining the Defendant from trespassing or entering the suit land title No. MITUMBIRI/WEMPA/BLK.2/4132 or otherwise interfering with the Plaintiff's quite possession of the same.
 - b. An order compelling the Defendant to remove the structures erected on suit land and failure to do the Plaintiff to remove the same at the Defendant's costs.
2. The Plaintiff avers that at all material times to suit he is the registered owner of the suit land. That the Defendant has without any lawful cause entered into the suit land, cultivated thereon and erected a semi-permanent structure. That despite demand to stop the trespass and remove the illegal structures the Defendant has refused/failed and or neglected to do so.
3. To prove ownership, the Plaintiff has produced a certificate of official search dated 21/4/17 showing she is the registered owner of the suit land having been so registered on 14/11/06 and title issued on 17/11/16.
4. The Defendant was duly served with summons to enter appearance on the 11/9/17 however he failed to so enter appearance or file a defence within the stipulated time and the Plaintiff filed a request for Judgement on 3/10/17 and obtained judgement in default on 12/10/17. The matter was thereafter listed for formal proof.
5. It is on record that despite obtaining interlocutory judgment on 12/10/17 the Plaintiff was again served on 11/1/18 with a hearing notice which did not elicit any response. At the hearing of the formal proof, the Defendant was present in Court. He informed the Court that he does not wish to enter appearance nor file a defence and then walked out of the Court.
6. At the hearing of the case the Plaintiff reiterated the contents of the Plaintiff and stated that she acquired the suit land as a gift from her husband Mwangi Thaburi. That the trespass by the Defendant has deprived her of her right to use and enjoyment of the suit land.
7. The Plaintiff on 10/4/18 filed written submissions which I have read and considered.
8. 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 certificate of official search indicating that she is the owner of the suit land.
9. 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.
10. 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.

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 the land has a right to possession, occupation and use of the suit land. It is the Plaintiffs case that the Defendant’s occupation of her land is without her consent or legal basis. The Defendant though served failed to rebut the claim.

12. Final orders;

a. It is hereby ordered that a permanent injunction restraining the Defendant from trespassing or entering the Suitland title No. MITUMBIRI/WEMPA/BLK.2/4132 or otherwise interfering with the Plaintiff’s quiet possession of the same.

b. It is hereby ordered that the Defendant do remove the structures erected on Suitland within 30 days from the date hereof and failure to do so the Plaintiff to remove the same at the Defendant’s costs.

c. The cost of the suit shall be borne by the Defendant.

DELIVERED, DATED AND SIGNED AT MURANG’A THIS 19TH DAY OF JULY 2018.

J. G. KEMEI

JUDGE

Judgment read in open Court in the presence of;

Mr Malenya HB for Mr Njiraini for the Plaintiff

Defendant – Absent

Ms. Irene and Mr Wainaina, Court Assistants.