



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 37 OF 2012

JOSEPH MASINDE WEKESAPLAINTIFF

VERSUS

EUNICE NANZALA JUMADEFENDANT

JUDGEMENT

This case is briefly that, at all material times, the plaintiff was and still is the absolute registered proprietor of the parcel of land designated as L.R. No. North Wanga/Matungu/2337 containing by measurement approximately 0.20 hectares whose boundaries are clearly delineated on the ground having obtained title thereto on 24th April, 2012. That plaintiff avers that he was enjoying exclusive, peaceful and quiet possession and use of land parcel L.T. No. North Wanga/Matungu/2337 but the defendant has illegally, wrongfully, forcefully and without any colour of right, consent and or authority trespassed onto a portion of the plaintiff's L.R. No. North Wanga/Matungu/2337 and started farming and or working on the said portion of the plaintiff's parcel of land. The plaintiff has on numerous occasions requested and pleaded with the defendant to vacate the suit land in vain and the plaintiff's attempts to seek intervention of the local provincial administration has borne no fruits as the defendant has remained adamant and refused and or failed to vacate his land and continues in such refusal thus necessitating this suit. The plaintiff further avers that the defendant has threatened and intends, unless restrained by this Honourable court to continue or remain in wrongful occupation of the suit land and or trespass thereon. By reason of the defendant's acts of trespass the plaintiff has and continues to suffer loss and damage. The plaintiff prays for judgement against the defendant for orders that;

- a) This Honourable court does order and or declare that the plaintiff is the rightful owner of land parcel No. North Wanga/Matungu/2337 and is entitled to exclusive, peaceful and unimpeded possession and use thereof and to issue an order that the defendant her relatives, agents, servants, employees and or any other person claiming through her be evicted from the said parcel of land.
- b) This Honourable court be pleased to issue a permanent injunction perpetually restraining the defendant either by herself or through her relatives, employees, servants and or agents or any other person claiming under her from alienating, laying claim to, trespassing onto, utilizing, developing, carrying out any works on constructing on and or in any other manner dealing with land parcel L.R. No. North/Wanga/Matungu/2337 and or interfering with the plaintiff's peaceful and exclusive ownership possession and or use thereof.
- c) Costs of this suit and interest thereon.
- d) Any other or further reliefs deemed fii and just.

PW1 the plaintiff testified that, he is the owner of parcel of land designated as L.R. No. North Wanga/Matungu/2337 measuring approximately 0.20 hectares having been registered as the proprietor thereof on 24th April 2012 (PEX1). That the boundaries of the said parcel of land are clearly delineated on the ground and he was enjoying exclusive, peaceful and quiet possession and use thereof. That the defendant has illegally, wrongfully, unlawfully and without any colour of right and without his consent or authority trespassed onto a portion of his land parcel No. North Wanga/Matungu/2337 and started working thereon his protests notwithstanding. He has on numerous occasions pleaded with the defendant to stop the trespass and sought the intervention of the local provincial administration but the defendant has refused to heed my pleas and continues with the said trespass.

PW2 testified that he knows Joseph Masinde Wekesa the plaintiff herein. He is aware that he is the owner of land parcel No. North Wanga/Matungu/2337 which measures 0.20 hectares. The boundaries of the said parcel of land are clearly marked out. He also knows that the defendant Eunice Nanzala Juma has encroached onto a portion of the plaintiff's land parcel No. North Wanga/Matungu/2337 and started using it without the authority of Joseph Masinde Wekesa. That Joseph Masinde Wekesa reported the matter to their area chief who summoned Eunice Nanzala Wekesa to go and explain why she was trespassing on the plaintiff's land but she refused to turn up. That the defendant has absolutely no right or claim to the said parcel of land or any portion thereof and she should be ordered to vacate or be forcefully evicted therefrom if she fails to vacate peacefully.

This court has carefully considered the evidence and submissions therein. The defendant was served but failed to attend court and the matter proceed ex parte. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

“Subject to this Act, 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 26 (1) of the Land Registration Act states as follows:

“The Certificate of Title issued by the Registrar upon registration ... 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... 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.”

The law is clear that, the Certificate of Title issued by the Registrar upon registration ... 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... and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

This court in considering this matter referred to the case of **Elijah Makeri Nyangw'ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR** where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. Hon Justice Munyao Sila in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

.....the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.

The court noted that the plaintiff filed this suit against the defendant seeking orders of eviction from land parcel No. North Wanga/Matungu/2337, injunction, costs and interest. Through her defence, the defendant denied the claim. In the evidence tendered by the plaintiff and his witness PW2, the plaintiff proved that he is the absolute owner of land parcel No. North Wanga/Matungu/2337 measuring 0.2 Hectares whose boundaries are clearly delineated. In his defence the defendant admitted this fact. The plaintiff testified that the boundaries to the suit land are clear and that the defendant has not only constructed a house thereon but that she is also working on the said parcel of land. This evidence was not challenged. The defendant did not testify to prove her defence. I find that the plaintiff has proved ownership of land parcel No. North Wanga/Matungu/2337, which ownership is not contested, the plaintiff is entitled to the rights of a registered absolute proprietor of a parcel of land, which is exclusive, peaceful, unfettered and unimpeded possession, occupation and use thereof as stipulated in the Registration of Land Act. I find that the plaintiff has proved his case on a balance of probabilities and grant the following orders;

1. The defendant, her relatives, agents, servants, employees and or any other person claiming through her from land parcel No. North Wanga/Matungu/2337 is to vacate the suit land within the next three months from the date of this judgement and in default an eviction order is to issue forthwith.
2. An order of permanent injunction to issue restraining the defendant either by herself or through her relatives, employees, servants and or agents or any person claiming under her from laying claim to, alienating, trespassing onto, utilizing, developing, carrying out any works on, constructing on and or in any other manner dealing with land parcel No. North Wanga/Matungu/2337 and or interfering with the plaintiff's exclusive, peaceful, quiet and unhindered ownership, possession and or use thereof.
3. Costs of this suit to the plaintiff.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 11TH DAY OF JULY 2018.

N.A. MATHEKA

JUDGE