



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

LAND CASE NO. 7 OF 2014

EDWARD KIRIMI BURIA.....PLAINTIFF

VERSUS

JULIA KAJUJU.....DEFENDANT

JUDGMENT

1. By a plaint dated **21/1/2014** and filed in court on **22/1/2014** prayed for the following orders against the defendant:-

(a) **An order of eviction against the defendant from Parcel No. ONTULILI/ONTULILI BLOCK 1 (KATHERI)/2075.**

(b) **A permanent injunction restraining the defendant whether by herself or her agents, assigns, representatives, servants, and/or anyone whatsoever acting at her behest from interfering with the plaintiff's quiet possession, user and enjoyment of parcel No. ONTULILI/ONTULILI BLOCK 1 (KATHERI)/2075.**

(c) **Costs of this suit and interest.**

The Plaintiff's Case

2. According to the plaint the plaintiff is the registered owner of **Parcel No. ONTULILI/ONTULILI BLOCK 1 (KATHERI)/2075 measuring 0.78 hectares** or thereabouts; that sometime in the year **2009** or thereabouts after the plaintiff purchased the land from the previous owner he granted the defendant a license to utilize the suit land for her own benefit which license he later revoked with a view to developing the land; that however the defendant has refused to give vacant possession and she continues to interfere with the plaintiff quiet user of the suit land thus hindering the plaintiff development of the land.

The Defendant's Defence and Counterclaim

3. The defendant filed a statement of defence and counterclaim on **18/2/2014** in which he denied the claim and alleged deceitful and fraudulent acquisition of the land by the plaintiff. She alleged that she had been in occupation of the land for **30 years**. The particulars of alleged fraud are stated in **paragraph 4** of that defence. In the counterclaim the defendant avers that the suit land was allocated to the defendant by the original owner and she has been party to developments on the same. She prays that the plaintiff's title over the suit land be cancelled.

The Plaintiff's Reply to Defence and Defence to Counterclaim

4. The plaintiff filed defence and defence to counterclaim on **25/3/2014** in which he denied the claim by the defendant.

The Plaintiffs' Evidence

5. The suit was heard on **26/6/2018**. The plaintiff testified on that date and adopted his statement dated **21/1/2014** and another one dated **28/12/2017**. He stated the suit land belongs to him and the title is in his name and that there are no encumbrances. He produced a copy of the title as **P.Exhibit 1**. The plaintiff identified the defendant as a sister to his mother-in-law. He stated that he had bought the land from one Justus M'Mukindia Irura whom he believes to be a brother-in-law to the defendant and that the land was vacant when he bought it. He explained that he was not able to get the original as the firm of the Mithega & Arithi Advocates which authored it is no longer in existent. That background having been laid he produced a copy of a sale agreement dated **10/8/1999**. He stated that he had asked the defendant to utilize a small portion of the suit land as she guarded over the land. On the **11/10/2013** he terminated the agreement that allowed her to live on the suit land and gave her **21 days** to vacate the land. He produced the notice to vacate as **P. Exhibit 2**. However the defended responded

by a letter dated **26/10/2013**, a copy of which was produced as **D. Exhibit 3**, stating that she is occupying her separate property which he has been living on for the last **30 years** and that the plaintiff is a stranger to her. The plaintiff avers that he has developed the land and that the defendant the has been utilizing only a small portion of **1/8** of an acre and that he had given the rest to a church and the same is being occupied by a church building which is run by one reverend John Muthuri. He sought that the prayers in the plaint be granted.

The Defendant's Evidence

6. The defendant did not attend and did not give evidence. However I have noted that there is on the record a hearing notice copied to her advocates which is dated **10/5/2018**.

The Plaintiff's Submissions

7. The plaintiff filed his submissions on **24/7/2013**. He relied on the case of **Richard Kubondo Maina vs. Ndungu Waweru 2017 eKLR** and **Sarah Jepkosgey Kimutai vs. Tito Tarus & 5 Others (2012) eKLR** and urged the court to grant judgment in favour of the plaintiff.

Determination

8. The hearing of the suit proceeded ex parte the defendant did not give evidence. The factual matters raised in her defence and counterclaim therefore not proved to be true. The plaintiff testified and produced documentary evidence and effectively demonstrated he is the owner of the suit land. **Section 25(1)** of the Land Registration Act provides as follows:

(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.

9. There is no evidence to support the defence. The rights of the registered owner, the plaintiff, must therefore be upheld. I therefore find the plaintiff has proved his claim on a balance of probabilities and I enter judgment against the defendant and issue the following orders:-

(a) An order that the defendant shall give vacant possession of the portion of parcel No. ONTULILI/ONTULILI BLOCK 1 (KATHERI)/2075 which she is occupying to the plaintiff and in default thereof she shall be evicted therefrom.

(b) A permanent injunction restraining the defendant whether by herself or her agents, assigns, representatives, servants, and/or anyone else whatsoever acting at her behest from interfering with the plaintiff's quiet possession, user and enjoyment of Parcel No. ONTULILI/ONTULILI BLOCK 1 (KATHERI)/2075.

(c) An order that the defendant shall bear the cost of this suit.

Dated and signed at Kitale on this 12th day of October, 2018

MWANGI NJOROGI

JUDGE

ENVIRONMENT AND LAND COURT, KITALE

Delivered on 31st day of October, 2018

JUDGE

ENVIRONMENT AND LAND COURT, MERU