



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC NO. 226 OF 2017

FORMERLY MACHAKOS ELC NO.454 OF 2012

PATRICK NTHIWA KYALO.....PLAINTFF

VERSUS

MUTUA KATUMO NDUUTIDEFENDANT

JUDGMENT

1. The plaintiff commenced this suit by way of a plaint dated 07th December, 2012 and filed in court on even date. He seeks the following orders against the defendant:-

- (a) Permanent injunction restraining the Defendant, his agents, servants and or employees from leasing, transferring, cultivating or in any other way whatsoever from interfering with the plaintiff's ownership of title number Makueni/Nguu Ranch/388.**
- (b) Vacant possession of title number Makueni/Nguu Ranch/388.**
- (c) A declaration that the plaintiff is the bona fide owner of title number Makueni/Nguu Ranch/388.**
- (d) Costs of the suit plus interest at court rates.**

2. This matter proceeded as undefended suit after the defendant failed to enter appearance and to file his defence after being served with summons on the 19th January, 2013.

3. During the hearing, the plaintiff adopted his statement dated 07th December, 2012 and filed in court on even date as his evidence. The statement is to the effect that the plaintiff is the absolute proprietor of title number Makueni/Nguu Ranch/388 having legally acquired it on the 24th April, 2012. He said that he had been in possession of the said parcel of land number 388 Nguu Ranch prior to the issuance of the title deed and pointed out that the land was allocated to him after he made an application to the District Land Adjudication Officer, Kibwezi. He said that upon acceptance of his application on 05th October, 2012, he made all the necessary payments that were required of him whereupon he was issued with a letter of acceptance and later a title deed.

4. The plaintiff said that despite his legal possession of the title deed for the parcel of land in question, he was shocked to see the defendant claim ownership of it. The plaintiff added that the defendant went ahead to lease the land to third parties without his consent. That he was forced to report the matter to the area chief who summoned the defendant. That the defendant agreed to give vacant possession of the land but he later changed his mind as a result of which the plaintiff instructed his advocate to write a demand letter to him. He produced the six documents in his list of documents dated 07th December, 2012 and filed in court on even date as P. exhibit Nos. 1 to 6 respectively.

5. In his written submissions, the Plaintiff's counsel framed three issues for determination. These were:-

- a) Whether the suit land belongs to the plaintiff or the defendant.**
- b) Whether the holder of an allotment letter (if any) can challenge the holder of a registered title.**
- c) Whether the defendant's execution of a notice to vacate amounts to an indication that indeed the land does not belong to him.**

6. On my part, I will adopt the first issue and frame a second one namely; **whether or not the defendant should give vacant possession of**

the suit land.

7. The Plaintiff's counsel cited Section 7 of the Land Act, 2012 which provides the methods for acquisition of title to land. The section provides as follows:-

Title to land may be acquired through;

(a) Allocation,

(b) Land adjudication process,

(c) Compulsory acquisition

(d) Prescription,

(e) Settlement programs,

(f) Transmissions,

(g) Transfers,

(h) Long term leases exceeding twenty one years created out of private land, or

(i) Any other manner prescribed in an Act of Parliament.

8. The counsel went on to submit that Nguu Ranch was amongst the parcels of land without title and that after adjudication process whoever had interest in the land was free to petition the District Land Adjudication Officer Kibwezi. The counsel pointed out that the Plaintiff followed the due process and applied to the Land Adjudication Officer, who after ascertaining the Plaintiff's interest in the suit property as issued the latter with a title deed. The counsel went on to submit that the Plaintiff is the absolute registered proprietor of the suit property as opposed to the Defendant whose claim is based on a letter of allotment. The counsel cited the case of *Wreck Motor Enterprises Vs. Commissioner of Lands and two others in Nairobi Civil Appeal No.71 of 1971* where it was held that once land was registered, it is alienated and a party cannot rely on a letter of allotment. He added that a letter of allotment cannot be used to defeat the title of a person who has been registered as the proprietor.

9. The counsel submitted that even though the defendant claims that the land was given to him by his father who was in turn given the land through an allotment, no evidence was produced to substantiate this claim.

10. The Plaintiff's Counsel urged the court to grant the Plaintiff the prayers he has sought in his plaint.

11. I have read the evidence on record as well as the submissions that were filed by the Plaintiff's counsel and my finding is as follows:-

Regarding the issue of whether or not the suit land belongs to the Plaintiff or the Defendant, I hold that from the evidence on record, the land indeed belongs to the former. The Plaintiff did produce a copy of title deed number Makueni/Nguu Ranch/388. Under Section 26(1) of the Land Registration Act, "***The certificate issued by the Registrar upon registration, or purchaser of land upon a 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 un-defeasible owner, subject to encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of the 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 has been acquired illegally, unprocedurally or through a corrupt scheme."

There is no evidence before me to challenge the plaintiff's title and as earlier on stated, that leaves the plaintiff to be held as the owner of the suit land and as such, the defendant should give vacant possession of it.

12. From the foregoing, I am satisfied that the plaintiff has a cause of action against the defendant. I proceed to enter judgment for the plaintiff and against the defendant in terms of prayers (a) (b), (c) and (d) of the plaint. It is so ordered.

Signed, Dated and Delivered in open court on this 25th Day of October, 2018.

MBOGO C.G.,

JUDGE.

In the presence of:

Mr. Hassan holding brief for the Plaintiff – Absent

Mr. Kwemboi – Court Assistant

MBOGO C.G.,

JUDGE,

25/10/18.