



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC. CASE NO. 218 OF 2011

SAKI LIMITED.....PLAINTIFF

VERSUS

HUMPHREY OMOLO.....1ST DEFENDANT

DAISY J. RUTOH.....2ND DEFENDANT

JAMLICK MURIUKI STEPHEN.....ND DEFENDANT

SAMWEL RONO LANGAT.....4TH DEFENDANT

RISPER O. KHAVAI.....TH DEFENDANT

JANE WANJIKU MULWA.....6TH DEFENDANT

WILLIAM OTIENO OBEGO.....7TH DEFENDANT

KIPSANG SUMUKWO.....8TH DEFENDANT

JOSEPH OGUTU ONYANGA.....9TH DEFENDANT

TERESIOH NYAGA SAMMY.....10TH DEFENDANT

EVERLYNE MULALIA MUTHERI.....11TH DEFENDANT

JAMES ONYANGO ALBELT.....12TH DEFENDANT

LORD'S LAS CALL CHURCH.....13TH DEFENDANT

CHARLES MUTHUI MUHORO.....14TH DEFENDANT

ENOSH ONYIGO AUKO.....15TH DEFENDANT

JOSEPH KINYUA WACHIRA.....16TH DEFENDANT

STELLA KATHURE.....17TH DEFENDANT

ELIUD KIPKOSGEI CHEROP.....18TH DEFENDANT

PATRICK THUO MWANGI.....19TH DEFENDANT

GEORGE GATHIGIRA.....20TH DEFENDANT

JULIUS NDUTA NGANGA.....21TH DEFENDANT

LYDIA MUHONJA.....22ND DEFENDANT

JOHN OMONDI.....23RD DEFENDANT

JUDGMENT

This suit was commenced by way of a Plaint dated 9th May 2011 and filed on 17th May 2011 in which the Plaintiff sought for Judgment against the Defendants jointly and severally for:

- a) An order of eviction of the Defendants from the Plaintiff's parcel of land known as Land Reference Number 9042/157 in the Industrial Area, Nairobi (hereinafter referred to as the "suit property").
- b) Costs of this suit plus interest at court rates.

The Pleadings

In the Plaint, the Plaintiff stated that at all material times, it was and still is the registered proprietor of the suit property. It further stated that the suit property is an industrial plot to be used exclusively for industrial purposes. The Plaintiff further stated that in or about the year 2005, the Defendants jointly and severally wrongfully entered into the suit property and erected residential structures thereon together with a place of worship. The Plaintiff stated that for this reason, it had been deprived of the use and development or enjoyment of the suit property and continues to suffer loss and damage. The Plaintiff stated that despite written demand and notice of intention to sue the Defendants have refused or neglected and failed to vacate the suit property.

The Defendants entered appearance on 13th January 2012 and filed their joint Statement of Defence on 20th January 2012. In their Statement of Defence, the Defendants stated that their company known as Euga Networks Limited, in which they were shareholders, was the legally registered proprietor of the suit property, having been granted the grant for the same by the Government of Kenya. On that ground, they denied being trespassers on the suit property stating that they occupied the suit property legally as shareholders of Euga Networks Limited. They further denied that the Plaintiff had suffered any loss or damage, stating that the Plaintiff was not the registered proprietor of the suit property. They further denied knowledge of any written demand or notice of intention to sue as none had been served upon them.

The Evidence

The hearing of this suit proceeded on 25th May 2017 when the Plaintiff gave its evidence. The Defendants did not attend the hearing though they had been duly served with a hearing notice. At the hearing, only one witness testified on behalf of the Plaintiff, which is a limited liability company. The witness was called Eliud Nicholas Kihara who told the court that he was a Director of the Plaintiff company with due authority to represent the Plaintiff. Mr. Kihara told the court that the suit property was allotted to the Plaintiff by the Ministry of Lands and Housing vide a Letter of Allotment dated 6th December 1990 as a compensation for the portion of the Plaintiff's plot L.R. No. 154/46 Kiambu District (as it then was) which was taken by the Government for an access road to Nyanjenga Primary School. He produced a copy of this Letter of Allotment. It was Mr. Kihara's evidence that arising from this allotment, the

Plaintiff company was and still is the registered proprietor of the suit property. In further support of this assertion of ownership, Mr. Kihara produced before the court the original Grant of the suit property dated 10th November 1999 in the name of the Plaintiff as well as a Certificate of Official Search, which also attested to this fact. Mr. Kihara further told the court that the Plaintiff company has been paying rates for the suit property as evidenced by a copy of a Letter dated 30th August 2012 from the Chief Land Registrar to the then Town Clerk City Council of Nairobi (as it then was). Mr Kihara testified that he knows the 13th Defendant, which is a church or a religious ministry registered under the Societies Act. He further stated that on or about 22nd April 2005, the Plaintiff company wrote to the District Officer Embakasi Division (as it then was) complaining of the illegal settlement by the Defendants on the suit property and seeking for an urgent action to be taken against the Defendants. He told the court that the District Officer did not reply to the letter. He further added that the Plaintiff company then gave Notice dated 12th May 2010 to the Defendants to vacate the suit property which they occupied illegally and give vacant possession to the Plaintiff company but the Defendants refused, neglected and or failed to comply with the said notice. He added that he also notified the then Provincial Administration. He further told the court that on 13th October 2010, the Plaintiff company wrote a letter to the District Commissioner of Embakasi seeking his intervention against the Defendants. He stated that despite all these efforts, the Defendants continued to illegally and unlawfully occupy the suit property and proceeded to erect structures thereon. Mr. Kihara testified that the Defendants have no valid claim to the suit property which is the lawful property of the Plaintiff company and in the circumstances, the Defendants are illegal trespassers thereon. He requested the court to evict the Defendants from the suit property and give vacant possession thereof to the Plaintiff company.

Issues for Determination, Analysis and Determination

The only issue for determination in this suit is who is the owner of the suit property as between the Plaintiff and the Defendants and flowing from this, whether or not to issue an order to evict the Defendants out of the suit property.

The Plaintiff has told the court that it is firstly the allottee of the suit property from the Ministry of Lands and Housing. As proof for this assertion, the Plaintiff company produced a Letter of Allotment dated 6th December 1990 which indicated that the suit property was allotted to the Plaintiff as a compensation for the portion of the Plaintiff's plot L.R. No. 154/46 Kiambu District (as it then was) which was compulsorily acquired by the Government from the Plaintiff in order to build an access road to Nyanjenga Primary School. Further to this, Mr. Kihara, a Director of the Plaintiff, produced the original title deed to the suit property which showed that indeed the Plaintiff company is the registered proprietor of the suit property. The Defendants on the other hand stated in their Statement of Defence that the suit property belongs to a company called Euga Networks Limited in which they were the shareholders. This assertion was not supported in any way by way of evidence. The Defendants did not attend the hearing of this suit and produced no evidence at all to prove their assertion. That being the case, the Plaintiff company's assertion of ownership of the suit property remained unchallenged at all. The position of the holder of a title deed over a parcel of land is well stated in **Section 26(1)** of the **Land Registration Act** which provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... 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 Plaintiff's title in respect of the suit property has not been challenged on any of the grounds

enumerated in the above legal provision. That being the case, this court finds that the Plaintiff is indeed the registered owner of the suit property.

With the above finding that the Plaintiff is the duly registered proprietor of the suit property, it follows that the Plaintiff has the rights over the suit property as set out in **section 24(a)** of the **Land Registration Act** which 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.”

I find that the Plaintiff is entitled to have exclusive use and possession of the suit property to the exclusion of the Defendants who are in illegal and unlawful occupation thereof. I therefore issue an order of eviction of the Defendants from the suit property with immediate effect under the supervision of the Officer Commanding Police Station Embakasi.

Arising from the foregoing, Judgment is entered in favour of the Plaintiff as stated herein with costs.

SIGNED AND DATED BY LADY JUSTICE MARY M. GITUMBI AT NAIROBI THIS 17TH DAY OF OCTOBER 2018.

MARY GITUMBI

JUDGE

DELIVERED BY JUSTICE BERNARD EBOSO AT NAIROBI THIS 23RD DAY OF OCTOBER 2018.

B. M. EBOSO

JUDGE