

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 241 OF 2010

ISLAMIC COLLEGE ATHI RIVER.....PLAINTIFF

VERSUS

RASHID MBULIKA & 13 OTHERS.....DEFENDANTS

JUDGMENT

1. The Plaintiff herein sued 14 Defendants vide a Plaint dated 11th November, 2010. In the Plaint, the Plaintiff averred that it is the registered proprietor of land known as L.R. Numbers 337/612 measuring 11.41Ha; that the Plaintiff has been using the land to the exclusion of the Defendants and that the Plaintiff has developed a mosque and a school on the land.
2. The Plaintiff averred that on or about September, 2010, the Defendants, either by themselves or acting under Kitengela Muslim Association entered on the suit land and damaged the property standing thereon and that an order of permanent injunction should issue.
3. Although the Defendants were notified of the hearing date, they never attended court when the matter came up for hearing on 14th May, 2018.
4. PW1 informed the court that he is the Plaintiff's Secretary; that the Plaintiff was registered as the proprietor of L.R. No. 337/612 on 1st July, 1973 and that it built an Islamic College and Classes on the land in 1979.
5. It was the evidence of PW1 that in the year 2008, the Defendants encroached on the suit land and caused chaos and damage; that in the year 2010, the Defendants assaulted the mosque leaders and took away the moveable properties belonging to the Plaintiff and that the Defendants were charged in court in respect to the assault and the damage that they occasioned on the suit property.
6. It was the evidence of PW1 that the Defendants' actions are an attempt to illegally acquire the Plaintiff's land and that they should be enjoined from doing so. PW1 produced several documents in evidence which included the Grant for L.R. No. 337/612 and the certificate of registration of the Plaintiff.
7. The Plaintiff's Chairman, PW2, reiterated the evidence of PW1.
8. The Plaintiff's advocate filed brief written submissions which I have considered.
9. PW1 produced in evidence the Grant that was issued to the Plaintiff in respect of a parcel of land known as L.R. No. 337/612. The Grant that was produced in evidence shows that the Plaintiff was registered as the proprietor of the suit land in the name of Machakos Islamic College Limited on 19th September, 2005. On the 10th July, 2008, the Certificate of Change of name of the Plaintiff from Machakos Islamic College Limited to Islamic College (Athi River) Limited was endorsed on the Grant as entry number 2. The land was subsequently leased to "Star-Sheikh Academy Limited" on 10th July, 2008 for ten (10) years.
10. The Defendants did not controvert the Plaintiff's assertion that it is the registered proprietor of the suit land, and that, PW1 and PW2 are its officials. In the circumstances, and in view of the evidence before me, I find that the Plaintiff has proved its case on a balance of probabilities.
11. For those reasons, I allow the Plaintiff's Plaint as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 12TH DAY OF OCTOBER, 2018.

O.A. ANGOTE

JUDGE