



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 279 OF 2011

BENHAM INSTITUTION SUPPLIES LIMITED.....PLAINTIFF

=VERSUS=

PAUL NDEGWA MWANGI & 9 OTHERS.....DEFENDANTS

JUDGEMENT

1. By an amended Plaintiff dated 21st October 2011, the Plaintiff sought the following reliefs against the defendants;-

a. A declaration that the plaintiff is the registered owner of the parcel of land known as NAIROBI L.R NO. 209/9372.

b. A permanent injunction restraining the defendants , their agents, servants, and/or employee from trespassing ,damaging and/or interfering in whatsoever way with the plaintiff's parcel of land known as NAIROBI LR NO209/9372.

c. An order that the defendants herein quit, vacate and hand over vacant possession of the parcel of land known as NAIROBI LR NO.209/9372.

d. An eviction and demolition of the building erected on the plaintiff's parcel of land known as NAIROBI LR NO.209/9372 orders to issue and the same be supervised by the OCS and Officer Commanding Buruburu Police Station.

e. Mesne profits

f. Costs of the suit

2. The defendants had been previously served in person at the initial stages but when subsequent service of court process proved to be a challenge, the plaintiff came to court and was allowed to serve by advertisement. It is only the third defendant who entered appearance and filed defence albeit out of time. The defence of the third defendant was however struck out after the plaintiff applied to have it struck out. The suit therefore proceeded by way of formal proof.

3. The plaintiff through its director Moez Manji testified that LR No.209/9372 (suit property) is registered in the plaintiff's name. The suit property was purchased through a sale agreement signed on 15th January 1997. The suit property was duly transferred to the plaintiff on 4th November 1997. The suit property was later invaded by the defendants who started by building temporary structures and others put up permanent structures. The plaintiff asked the occupants of the suit property to vacate but they declined to do so. A formal demand was later issued asking the occupants to move out but they have declined to do so. The plaintiff's directors had intended to construct a go down on the suit property but this has been frustrated by the defendants who have refused to vacate.

4. I have gone through the evidence adduced by the plaintiff's director as well as the documents produced in support of the plaintiff's case. There is no doubt that the plaintiff is the registered owner of the suit property . The plaintiff produced a sale agreement dated 15th January 1997 which shows that the suit property was purchased from Kabul Singh, Jawala Singh Gill, Inderjit Singh and Kabul Singh Gill who were tenants in common in equal shares. A transfer dated 24th August 1997 was signed and the property was registered in the name of the plaintiff on 4th November 1997. The search obtained shows that the plaintiff is still the registered owner of the suit property.

5. The plaintiff had commissioned a surveyor who went to the ground and confirmed that the suit property indeed existed on the ground. The surveyor from Diligent Surveyors called Simon Ngumi Munyi produced a report of the survey which he undertook. The plaintiff also produced a demand letter issued by his lawyers on 18th March 2011.

6. The defendants were given an opportunity to explain why they are on the suit property but they did not do so. It is only the third defendant who filed a defence which defence was later struck out. Section 26(1) of the Land Registration provides as follows:-

“The certificate of title issued by the Registrar upon registration or for a purchase of land upon a transfer or 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 indefeasible owner subject to the encumbrances, easement restrictions and conditions contained or endorsed in the certificate 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 corrupt scheme”.

7. There are two instances when a certificate of registration can be challenged. It can be challenged on grounds of fraud or misrepresentation to which the person is proved to be a party and secondly, where the certificate has been acquired illegally, unprocedurally or through a corrupt scheme. In the instant case, there is no evidence to challenge the plaintiff's title. The defendants had the opportunity to explain why they have invaded the plaintiff's land but they did not. The plaintiff's evidence remains unchallenged. I find that the plaintiff has proved his case against the defendants on a balance of probabilities. I allow the plaintiff's claim in terms of prayers (a) to (d) of the amended plaint dated 21st October 2011. The defendants are granted 60 days to vacate from the suit property failing which execution to issue.

Dated, signed and delivered at Nairobi on this 11th day of October 2018.

E.OBAGA

JUDGE

In the absence of parties who were aware of the date and time of delivery of Judgement.

Hilda : Court Assistant

E.OBAGA

JUDGE