



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 3 OF 2018

KIARIE MUGO MICHAEL.....PLAINTIFF

VS

MOSES GITAU MWANGI..... DEFENDANT

JUDGMENT

1. The Plaintiff filed suit against the Defendant on the 19/1/2018 claiming that the Defendant had unlawfully trespassed onto the suit land MAKUYU/KARIAINI/BLOCK 1/380. He sought orders for eviction and removal of caution lodged on the land.

2. According to the affidavit of service filed on record on the 1/2/2018 the Defendant was served with summons to enter appearance which though he refused to sign accepted. On failing to enter appearance or file defence within the stipulated time, the Plaintiff filed a request for judgment on the 24/4/2018. The same was allowed on even date. The Plaintiff listed the matter for formal proof hearing. The Plaintiff's case is therefore undefended.

3. At the hearing the Plaintiff gave evidence that he bought land from one James Mburu Mwangi alias Karamaindo at Kshs. 60,000/- vide an agreement of sale dated the 14/8/1999 upon payment of the full purchase price. That he was issued with a title on the 15/2/1989. He has attached a copy of the official search of the title dated 27/11/2017 as well as a copy of the green card to support his evidence on ownership of the suit land. That thereafter as he went to cultivate his land he found the Defendant had trespassed onto the land cultivated and erected a house thereon.

4. Section 24 of the Land Registration Act No 3 of 2012 states that 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. Section 25 of the said Act provides that 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—to encumbrances charges or leases shown on the register and the overriding interests as stated in section 28 of the Act.

5. Section 26 of the Land Registration Act, 2012 provides;

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser 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, easements, 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 a corrupt scheme

6. The Courts are therefore mandated by statute to consider a title document as prima facie evidence of ownership to land and a conclusive evidence of proprietorship to land that can only be challenged on grounds stipulated as above. In the present case the title produced by the Plaintiff shows that the suit land is registered in his name. That position was not challenged by the Defendant in fact the Defendant failed to file any pleadings in opposition to the claim.

7. Among the rights to be enjoyed by a registered owner of any land is the right for peaceful and quiet enjoyment of the land he owns, in other words the rightful owner to land has a right to possession, occupation and use of the suit land. The Plaintiff conducted evidence that shows that the Defendant has illegally taken possession of the suit land and is utilizing it for his own benefit, those actions of the Defendant amount to violation of the Plaintiffs right and must be stopped. It is the Plaintiffs case that the Defendant's occupation of her land is without his consent or legal basis. The Defendant failed to rebut the claim.

8. Having found that the Plaintiff has proven his claim on a balance of probability and established that the Defendant has no legal right to remain on the suit land based on the evidence placed before this Court, I have not found any legal basis for the continued subsistence of the caution on the title. The Plaintiff's claim therefore succeeds and the Court makes the following orders;

a. The Defendant is hereby ordered to vacate parcel No. Makuyu/Kiriani/Block1/380 and in default an eviction to issue in accordance with the provisions of section 152 of the Land Act, 2012.

b. The Caution lodged on the suit land be and is hereby removed forthwith.

c. There is no evidence on record that the Plaintiff issued a demand notice before filing this suit. I make no orders as to costs.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 11TH DAY OF OCTOBER 2018

J.G. KEMEI

JUDGE

Delivered in open Court in the presence of:

J B Mwangi for the Plaintiff

Defendant – Absent

Irene and Njeri, Court Assistants