



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 100 OF 2017

SUSAN WAMBUI WACHIRA.....PLAINTIFF

VERSUS

CHRISTINE KASAVI MONYI.....DEFENDANT

JUDGMENT

1. In the Plaintiff dated 6th March, 2017, the Plaintiff alleged that at all material times, he was the registered owner of land known as Ndithini/Mananja Block 1/558; that he purchased the suit land from James Njuguna Mwangi on 27th January, 2016 and that the Defendant unlawfully trespassed on the suit land claiming that the land was hers.
2. The Plaintiff is seeking for a declaration that he is the bona fide owner of the suit land and for an order of vacant possession of the land. In addition, the Plaintiff is seeking for general damages for trespass and *mesne* profits. Although the Defendant was served with the Summons to Enter Appearance, he neither entered appearance nor filed a Defence.
3. The Plaintiff, PW1, informed the court that he purchased the suit land from one James Njuguna Mwangi for valuable consideration; that the suit land was transferred in her name and that the Defendant trespassed on the suit land in January, 2016. According to PW1, despite being warned by the chief of the area, the Defendant has continued with her acts of trespass. The Plaintiff produced in evidence a copy of the Title Deed and the Transfer in respect of the suit land.
4. The Plaintiff's advocate submitted that under Section 24 of the Land Registration Act, the registration of a person as the proprietor of land vests in that person the absolute ownership of the land; that the absolute ownership of the suit land passed to the Plaintiff when she was registered as the owner on 27th January, 2016 and that the Defendant should be evicted from the suit land.
5. The Plaintiff's advocate submitted that the Defendant has never paid rent since the year 2016 when she trespassed on the suit land; that the Defendant should be ordered to pay Kshs. 48,000 per annum being *mesne* profits until delivery of possession of the suit land and that the Plaintiff's claim be allowed.
6. It is not in dispute on the 27th January, 2016, that the Plaintiff was registered as the proprietor of a parcel of land known as Ndithini/Mananja Block 1/558 measuring 4.54Ha. The Title Deed produced by the Plaintiff shows that the same was registered in her favour after one James Njuguna transferred the land to her.
7. It is trite that the registration of a person as the proprietor of land vests in that person the absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto (*see Section 24 of the Land Registration Act*). Indeed, the rights of the registered proprietor of land can only be defeated on the ground of fraud or misrepresentation to which the person is proved to be a party; or where the Certificate of Title has been acquired illegally, unprocedurally or through a corrupt scheme (*See Section 26 of the Land Registered Act*).
8. The Defendant has not traversed the allegations raised by the Plaintiff in the Plaintiff. Indeed, there is no evidence before the court to show that the Title Deed that the Plaintiff is holding was acquired fraudulently or by misrepresentation. Indeed, the Plaintiff produced in evidence the Title Deed that was issued to her in respect of the suit land. Consequently, I find that the Plaintiff has proved that she is the lawful owner of the suit land.
9. Although the Plaintiff is entitled to general damages for trespass, she did not adduce evidence to show that indeed the Defendant has been in continuous occupation of the suit land. In the absence of photographs or other form of evidence to show that the Defendant has been on the land continuously since the year 2016 to date, the claim for general damages for trespass fails.
10. For those reasons, I allow the Plaintiff's Plaintiff dated 6th March, 2017 as follows:

a. A declaration be and is hereby issued that the Plaintiff is the registered proprietor of a parcel of land known as Ndithini/Mananja Block 1/558 (the suit land).

b. A declaration be and is hereby issued that the Defendant, whether by herself or otherwise is wrongfully in occupation of the suit land and should vacate the said land forthwith.

c. A permanent injunction be and is hereby issued restraining the Defendant from trespassing, interfering, transferring, alienating, occupying or in any way dealing with the Plaintiff's quiet possession of the suit land.

d. The Defendant to give vacant possession of the suit land.

e. The Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF NOVEMBER, 2018.

O.A. ANGOTE

JUDGE