



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.63 OF 2014

JANE JEPTUM1ST PLAINTIFF

JOEL ATUTI MANUA.....2ND PLAINTIFF

JOSEPH KIPRONO KIRUI.....3RD PLAINTIFF

MUTHONI MURIUKI KIRUI.....4TH PLAINTIFF

VERSUS

YAHYA ABDI HUSSEINDEFENDANT

JUDGMENT

(Plaintiffs being holder of a certificate of lease for the suit land; defendant disturbing their occupation claiming to have another title; defendant not filing any defence; only evidence presented being that of the plaintiffs; plaintiffs showing that they purchased the land, occupied it, and acquired title to it; no evidence which would vitiate the plaintiffs' title; judgment entered for the plaintiffs).

1. This suit was commenced by way of a plaint which was filed on 4 March 2014. In the suit, the plaintiffs pleaded that they are jointly registered as owners of the leasehold title in the land parcel Nakuru Municipality Block 18/77 having been issued with a Certificate of Lease on 28 August 2007. It is pleaded that on 24 February 2014, the defendant went to the suit land and demanded that the plaintiffs do vacate the same claiming to be holding another title to the said land. It is contended that any title held by the defendant cannot be a genuine title. In this suit, the plaintiffs have asked for an order of permanent injunction restraining the defendant from interfering with their quiet possession of the suit property, a cancellation of any title held by the defendant, damages, costs and interest.

2. The defendant was duly served but he did not enter appearance nor file a defence. Neither did he attend court at the hearing of the suit. The pleadings and evidence of the plaintiffs is therefore uncontroverted by the plaintiffs.

3. The 2nd plaintiff testified on behalf of all the other plaintiffs. He did state that they jointly purchased the suit property from the previous proprietor, one Mr. Francis Gachanja. He produced a copy of a Lease, Certificate of Lease and Search Certificate, all in the name of Francis Gachanja. He stated that they then entered into a sale agreement with the said Francis Gachanja, which sale agreement he produced as an exhibit. They purchased the land on 20 June 2007 at a consideration of Kshs. 1,000,000/=. He stated that they paid all the land rates and rents, and obtained the requisite clearance certificates which he produced as exhibits. They then paid stamp duty and the transfer fees and the property was transferred to them jointly. A Certificate of Lease was issued in their name which he produced as an exhibit. He stated that they applied to subdivide the land into two plots and permission was granted by the Department of Physical Planning. The property is on the ground subdivided and the plaintiffs are only awaiting issuance of title for the subdivided portions. He also testified that they have actually developed the property and have their houses in it. He mentioned that he has actually not seen the defendant's title although the defendant claims to have a title to the land. He himself was arrested after the defendant made a complaint to the police claiming that the plaintiffs are on his property but he was later released. He stated that the defendant has been threatening them with eviction.

4. As I mentioned earlier, the pleadings and evidence that are on record are only those of the plaintiffs. I have seen from the evidence tabled that Francis Gachanja, held a lease for the suit property. He transferred his interest to the plaintiffs and the plaintiffs are now the leasehold proprietors of the suit property. I have seen their Certificate of Lease, and I have no reason to doubt it. Indeed, the law at Section 26 of the Land Registration Act, 2012, requires that I take this as prima facie evidence of ownership. The defendant has not tabled anything to vitiate the title of the plaintiffs. As proprietors, the plaintiffs are entitled to exclusive use and ownership of the suit property. This right is contained in Sections 25 of the Land Registration Act, which provides as follows :-

Rights of a proprietor

25. 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—

(1) (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by [section 28](#) not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

5. The defendant therefore has no right to enter the suit land or threaten the plaintiffs with eviction. I have no hesitation in issuance an order of permanent injunction restraining the defendant from entering, being upon, or in any other way interfering with the plaintiffs' quiet possession of the suit land. I also issue a declaration that as between the plaintiffs and the defendant, it is the plaintiffs who hold good title to the suit property and if the defendant has any sort of title document, the same is hereby declared to be null and void and the Land Registrar or other authority ought not to act on it. There is a claim for damages but no evidence was led to support the claim and I therefore make no award on it. The plaintiffs will however have costs of this suit.

6. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 22nd day of November 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. R.K Langat holding brief for Mr. Machage for the plaintiffs.

Defendant: Absent.

Court Assistant : Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU