



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NAIROBI

CASE NO. 904 OF 2016

REUBEN WARUI MWANGI.....PLAINTIFF

VERSUS

JOSPHAT ARADI.....1ST DEFENDANT

DAVID OKINYI.....2ND DEFENDANT

JOHN ATARO.....3RD DEFENDANT

OSCAR MABIA MMAYI.....4TH DEFENDANT

J U D G M E N T

1. The plaintiff instituted the present suit vide a plaint dated 28th July 2016 filed in court on the same date. The plaintiff claimed that on 3rd March 2016 he purchased a plot No. **LR Nairobi Block/9042/340 Tassia - Embakasi Scheme** (hereinafter referred to as “**the suit property**”) from the previous allottee, one Jackson Lemama Ledonyo. He averred that he took possession of the suit property following the purchase but that on 27th July 2016 the defendant without any colour of right invaded the suit property and commenced construction of some temporary structures thereon. The plaintiff averred that the defendant’s unlawful entry onto the suit property has interfered with his rightful occupation of the suit property and that he stands to suffer irreparable damage.

2. The plaintiff prays for judgment against the defendants for:-

a) An injunction restraining the defendants whether by themselves, their servants or agents or anybody claiming their authority or otherwise however from interfering with the plaintiff’s Plot No. LR No. Nairobi Block/9042/340 Tassia/Embakasi Scheme Nairobi.

b) General damages for trespass.

c) Costs of this suit.

d) Interest on (c) and (d) above.

e) Any other or further relief this Honourable Court may deem fit and just to grant.

3. The defendants never filed any defence and the matter was fixed for formal proof before me on 30th October 2018. The plaintiff testified as the sole witness in support of his case. He relied on his filed witness statement and the documents he had filed to support his case against the defendants. The plaintiff testified that he purchased the suit property from Jackson Lemama Ledonyo for the consideration of kshs.900,000/= as set out in the agreement of sale dated 3rd March 2016 (“**PEx.1**”). The plaintiff stated he paid the full purchase price which was duly acknowledged by the seller. He tendered in evidence documents that showed that said Jackson Lemama Ledonyo, the seller had been allocated the land by the City Council of Nairobi.

4. Letter dated 2nd May 2006 (“**PEx.2**”) to Jackson Lemama Ledonyo referenced “**verification of Tassia/Embakasi Scheme**” provided as follows:

“Under Minute 19 of 23rd February 2006 of Town planning adopted by Full Council held on 7th March 2006 which recommended that your squatting be regularized. The committee appointed to verify the squatters has recommended that you be regularized on Plot No. 340. Under the following conditions:-

- (a) That the plot shall be on leasehold basis.
- (b) Your payment of the following charges:
 - (i) Stand premium 6,200/=
 - (ii) Ground rent 1,200/=
 - (iii) Survey/Architectural fee
- (c) Any other condition as given by the council(c).

5. The plaintiff paid all the outstanding dues to the City Council against the account of Plot No. 340 before the transfer to him could be endorsed by the City Council. The payments were made to the Nairobi City County on 3rd March 2016 as per the receipts issued thus:

1) Ground rent for all the years	26,600/=
2) Survey fee	25,000/=
3) Stand premium	<u>6,200/=</u>
Total	<u>57,800/=</u>

The plaintiff further testified that the defendants have refused to vacate from the suit property and there is presently an ongoing criminal case at Makadara Law Courts where the defendants have been charged with trespass. The plaintiff stated that the defendants have erected temporary structures on the suit property and he prays for an order for their removal and damages for trespass.

6. I have reviewed the pleadings and the evidence adduced by the plaintiff together with the documents tendered in support of the plaintiff's case. On the basis of the evidence which has not been contravened by any other evidence as the defendants never filed any defence, I am satisfied that indeed the plaintiff purchased the suit property from one Jackson Lemama Lendonyo who had validly been allocated the plot by the City Council of Nairobi. The plaintiff took possession of the suit property after the beacons had been pointed out to him. The invasion of the property by the defendants on 27th July 2016 was reported to the plaintiff by a neighbour who alerted him there were persons who had started erecting temporary structures on the plot which prompted the plaintiff to make a report to the police station.

7. The plaintiff has proved that he duly purchased the suit property. As the beneficial owner of the suit property he is entitled to have quiet possession and occupation and use of the property without interference from the defendants and/or any other person. There is no evidence that the defendants have any justification for occupying the suit property and in the absence of any such evidence I hold that they are trespassers onto the plaintiff's land and they have no justification to remain thereon. By trespassing onto the plaintiff's land they have denied the plaintiff the right to make use of the land. The plaintiff prays for general damages for trespass. I am mindful that the plaintiff has not proved any loss or damage that he has suffered. However in a claim for damages for trespass, no proof of damages is necessary once trespass is proved. Trespass is actionable per se and no proof of damage is required. I am satisfied that the defendants are in trespass and I will make an award for nominal damages that I assess at kshs. 50,000/= against the defendants jointly and severally.

8. On the whole, I am satisfied that the plaintiff has proved his case on a balance of probabilities and I enter judgment against the defendants jointly and severally on the following terms:-

- (a) **The defendants are hereby ordered to vacate and deliver vacant possession of land parcel LR No. Nairobi Block/9042/340 Tassia/Embakasi Scheme Nairobi to the plaintiff within 30 days of being served with the decree herein failing which an order of eviction of the defendants to issue on application by the plaintiff.**
- (b) **An order of permanent injunction do issue against the defendants by themselves, their servants and/or agents restraining them from re-entering or interfering with the plaintiff's Plot No. Nairobi Block/9042/340 Tassia/Embakasi Scheme Nairobi.**
- (c) **Kshs. 50,000/= on account of general damages for trespass together with interest at court rates from the date of judgment until payment in full.**
- (d) **Costs of the suit are awarded to the plaintiff.**

JUDGMENT DATED, SIGNED and DELIVERED at NAIROBI this 7TH DAY of DECEMBER 2018.

J. M. MUTUNGI

JUDGE

In the presence of:

.....for the plaintiff

..... for the 1st to 4th defendants

.....Court assistant

J. M. MUTUNGI

JUDGE