

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC. CASE NO. 402 OF 2012

SAMUEL WAWERU MWANGI.....PLAINTIFF

-VERSUS-

GEORGE MUNIU KINUTHIA.....DEFENDANT

JUDGEMENT

1. The Plaintiff is registered as proprietor of Dagoretti/Thogoto/T.394 (“the Suit Property”) which he bought from Hannah Wairimu, Martha Gathoni, Julia Muthoni, Rahab Wanjiku, Daniel Kinuthia, Elizabeth Wambui Ngwiri and Margaret Wanjiru Karanja vide a sale agreement dated 27/11/2009. The Defendant encroached onto this parcel of land in July 2011, uprooted the fencing poles and beacons and took possession and is still on the land.

2. The Plaintiff seeks an eviction order against the Defendant or his agents from the Suit Property; an injunction to restrain the Defendant or his agents from remaining on the suit land; general damages for trespass and mesne profits as well as costs in the Plaint dated 9/7/2012.

3. The Defendant filed a defence on 16/8/2012 which was struck out by the court. The Defendant has challenged the striking out and the Court of Appeal is yet to determine the issue. The application for stay of proceedings is also pending before the Court of Appeal.

4. The Plaintiff gave evidence and produced the sale agreement to show how he purchased the suit land. The Defendant is the son of Moses Kinuthia (now deceased) who was evicted from the suit land pursuant to a court order issued on 15/1/2009 in **HCCC No. 2863 of 1993**. The Plaintiff produced copies of the sale agreement, search done on the land, abstract of the title and the court orders.

5. Both parties filed submissions. The Defendant does not contend the fact that the Plaintiff is the registered owner of the land but challenges how the Plaintiff acquired the Suit Property. Defendant claims that cautions were placed on the land but they were removed in unclear circumstances and that the Plaintiff ought not to have bought the land because he was aware the Defendant laid claims to the same land.

6. The Plaintiff sought general damages of Kshs. 1 million for trespass and damages of Kshs. 10,000/= per month from the date of filing suit until delivery of possession. The court agrees with the Defendant’s submissions that the Plaintiff’s claim for damages is not based on what loss he suffered as no evidence was led on this issue. The court believes general damages of Kshs. 100,000/= is reasonable.

7. The court has considered the plaint, the evidence of the Plaintiff and the submissions of the counsel and is satisfied on a balance of probability that Plaintiff is the owner of the suit land. The court grants prayers i, ii, of the Plaint and general damages of Kshs. 100,000/=.

Dated and delivered at Nairobi this 6th day of December 2018.

K. BOR

JUDGE

In the presence of: -

Ms. Kibunja holding brief for Mr. Mugo for the Plaintiff

Ms. Mcharo holding brief for Mr. Thuita for the Defendant

Mr. V. Owuor- Court Assistant