



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
ENVIRONMENT & LAND COURT
ELC SUIT NO. 1446 OF 2013

CHOICE LANDS LTDPLAINTIFF

VERSUS

NANCY WANGUI1ST DEFENDANT

ANDREW ONYANGO.....2ND DEFENDANT

SHADRACK MWOKI.....3RD DEFENDANT

SAMUEL MBITHI.....4TH DEFENDANT

MONICAH MBURI.....5TH DEFENDANT

EVANS MICHAEL.....6TH DEFENDANT

JUDGEMENT

The plaintiff herein *Choice Lands Ltd* brought this claim against the Defendants through a Plaint dated 27th November 2013. The Plaintiff has sought for these Orders against the Defendants;-

- a. An eviction Order directed at the Officer Commanding Police Division (OCPD) Embakassi for the removal of 1st, 2nd, 3rd, 4th, 5th, and 6th Defendants jointly and severally , their agents, servants belongings and/or otherwise.*
- b. Mesne profits*
- c. General damages for trespass*
- d. Costs of the suit*
- e. Any other relief that this court may deem fit and just to grant*

The Plaintiff had alleged in the Plaint that it is the registered proprietor of all that parcel of land situate in the Embakasi areas, of Nairobi County containing by measurement **0.0800 Ha** or thereabout and designate **LR No. 9042/311**. It was further alleged that the Defendants by themselves, their agents, servants and or otherwise have trespassed upon the plaintiff's parcel of land without any lawful or

probable cause and without any color of right whatsoever. Further that the Defendants by themselves, their agents, servants and/or otherwise have without any probable or reasonable cause, whatsoever erected illegal structures upon the plaintiff's said parcel of land.

Therefore the Plaintiff has been deprived of its proprietary rights over its parcel of land and its use thereto and has suffered damages. Plaintiff further alleges that Notice of intention to sue has been given in vain and it therefore seeks for eviction of the Defendants herein, their agents, servants, belongings and/or otherwise from the suit land and also claims for general damages for trespass and mesne profits thereto.

The Defendants though served with summons to enter appearance together with the Plaintiff as is evident from the affidavit of service of **Joseph N Ndirangu** did not enter appearance nor file Defence .

The matter was therefore set for formal proof on **5th May 2015**. **Allan George Njogu Kamau**, a Director of the Plaintiff Company gave evidence and averred that he is an advocate of the High Court of Kenya practicing in the name of **A.G.N Kamau & Co. Advocates**. He further testified that the Plaintiff Company was incorporated on **19th April 1996**, as per the original certificate of incorporation produced as **exhibit 1**. It was his further testimony that one of the objects of the company is to own and develop property. PW1 also produced the Memo of Association as **Exhibit No.2**. He also testified that he was one of the subscribers of the Plaintiff and that a search carried on showed that he was still a Director. The search was produced as exhibit **No.3**.

That in pursuit of the object of which it was formed, the company entered into negotiations in the year 1991 with one **Job Mutai**, who had been issued with a letter of allotment **LR No. 9042/311 IR No. 73122**. That the said letter was transferred to the Plaintiff Company in an informal transfer. Subsequently, a Grant was issued by the Commissioner of Lands in favour of the Plaintiff on **16th May 1997**. It was his testimony that the land is measuring **0.1800 Ha** and is situated at Embakasi Village Nairobi. He produced the Original Grant as exhibit **No.4**.

He testified that the land has always been vacant until the **year 2010**, when he visited the suit land and found the Defendants had trespassed on it and put structures on the plot. That the structures constructed comprised of multi-storey and semi-permanent buildings. He also testified that he tried to resolve the matter administratively through the help of the local administration and the Defendants were willing to pay for the plot but it did not materialize. That he issued the Defendants with a Notice requiring them to vacate the plot in issue but they did not heed the Notice. The plaintiff has therefore come to court seeking for eviction of the Defendants and that the Plaintiff should be allowed to take possession of the suit plot. It was his further testimony that the Defendants earn a sum of **Kshs. 100,000/=** per month from renting the suit land and so the plaintiff is also seeking for mesne profit to be determined by this Court.

The plaintiff's advocates, **Mutembei, Gichuru & Co. Advocates** filed written submissions on **25th May 2015**, and urged the court to allow the plaintiff's case.

The Court has now carefully considered the available evidence and the exhibits produced herein and makes the following findings:-

There is no doubt that **Choice Lands Ltd**, is a limited liability company with a certificate of incorporation issued on **19th April 1996**, which was produced as exhibit 1. The company has a Memo of Association and one of its objectives is carrying on all or any of the business of property management, property housing, and estate developers and to purchase, acquire and buy houses, flats, any plots and buildings. PW1 testified that in line with its objective, the plaintiff's company purchased the suit property.

It is also evident from the Memo of Association and the search from the Companies Registry that **Allan George Njogu Kamau (PW1)** is one of the Directors of the plaintiff's company. PW1 testified that the suit land was transferred to the plaintiff on **16th May 1997**, and the court has seen the certificate of title registered on **16th May 1997**, and signed by the Commissioner of Lands on **9th May 1997**. The said certificate of title is in the name of the Plaintiff Company – **Choice Lands Ltd**. This Certificate of title

was issued under the **Registration of Titles Act Cap 281** and **Section 23** of the said Act (now Repealed) provided that;-

“The certificate of title issued by the Registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon and the title of that proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which he is proved to be a party”.

The above position has been replicated in Section 26 of the **Land Registration Act of 2012** . Therefore on the face of it, the plaintiff Company, **Choice Lands Ltd**, is the registered proprietor of **LR No. 9042/311** and prima –faciely it is the *absolute and indefeasible* owner of the suit property herein.

The plaintiff witness alleged that the Plaintiff acquired the suit property after entering into an informal agreement with one **Job Mutai** who had been issued with the letter of allotment for **LR No. 9042/311 IR No. 73122**. The said transfer was done informally but the grant was later issued to the Plaintiff Company by the Commissioner of Lands on **16th May 1997**. The Certificate of Grant exhibits 4 attest to the above position. The Plaintiff is therefore the absolute and indefeasible owner of the suit property as there is no evidence to the contrary. The plaintiff has alleged that the Defendants herein have invaded its suit property and have even put up some structures on the suit property.

The plaintiff did attach a copy of a Notice of Intention to sue sent to the Defendants. There is no evidence that the Defendants did respond to the same nor have they now vacated the suit property. The Defendants did not enter appearance nor file Defence. The Plaintiff’s allegations remain uncontroverted. The Plaintiff company being the registered proprietor of the suit land has its right protected under **Section 24 (a)** and **25(i)** of the **Land Registration Act** which provides as follows;-

Subject to this Act—

24 (a) 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; and

25. (1) 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—

Since the Plaintiff’s title to the suit land has not been revoked or cancelled through operation of the law, then the Defendants act of remaining on the suit property is an act of trespass and violation of the Plaintiff’s right under **Section 25** of the **Land Registration Act**.

The Defendants should therefore give vacant possession of the suit property to the plaintiff herein. The plaintiff has been denied the use of the suit. land especially from **November 2013**, when it issued a Notice of intention to sue The plaintiff is therefore entitled to general damages for trespass. The plaintiff had not put up any structures on the suit land. It has not been denied any income by the presence of the Defendants on the suit land. The plaintiff is therefore not entitled to any mesne profits.

Consequently, having now carefully considered the available evidence and the exhibit herein and the relevant provisions of law, the Court finds that the Plaintiff has proved its case on a balance of probabilities. For the above reasons, the Court enters Judgement for the plaintiff against all the Defendants herein, by themselves, their agents, servants and/or those claiming through them jointly and severally on the following terms.

a. The Defendants to vacate the suit property and give vacant possession to the plaintiff within a period of 45 days from the date of this judgement. In default, eviction order to issue as prayed in prayer no.(a) of the plaint.

b. General damages for trespass in the tune of ksh.3000,000/= .

c. The plaintiff is also entitled to cost of this suit.

d. The plaintiff to serve the Defendants with a Notice of entry of this Judgement immediately.

It is so ordered.

Dated, Signed and Delivered this 20th day of *January, 2017.*

L.GACHERU

JUDGE

In the presence of ;-

Mr Kinuthia holding brief for Mr Kamau for the Plaintiff

None attendance for the Defendants

Court Clerk: Hilda

Court: Judgement read in open Court in the presence of the above advocate and absence of the Defendants herein.

L.GACHERU

JUDGE