



REPUBLIC OF KENYA
IN THE LAND AND ENVIRONMENT COURT OF KENYA
AT KAKAMEGA

LAND CASE NO. 75 OF 2016

ANNE OKWISA OMUTERE.....PLAINTIFF

- VERSUS -

OMUKHANGO ANDETA.....DEFENDANT

JUDGMENT

This matter was filed in Court on the 11th May 2016 seeking the following orders;

1. an eviction order
2. a permanent injunction restraining the Defendant from encroaching, cultivating, constructing and or otherwise dealing with the land parcel number WEST BUNYORE/EBUSIKHALE/114 by himself, his family members, servants, agents and those claiming through him.
3. Damages for loss of use.
4. Costs of this suit.

The Plaintiff gave evidence in Court that she is the registered owner of the land parcel number WEST BUNYORE/EBUSIKHALE/114 measuring 1.8 acres. That the Defendant has trespassed into the Plaintiff's said parcel of land by building a semi – permanent house and has brought building materials in preparation for building a permanent house. The Plaintiff's claim against the Defendant is for an eviction order and a permanent injunction restraining the Defendant from encroaching, cultivating, constructing and or otherwise dealing with the land parcel number WEST BUNYORE/EBUSIKHALE/114 by himself, his family members, servants, agents and those claiming through him. The Plaintiff avers that there was a civil suit being Environment and Land Court case No. 247 of 2013 in respect of the same subject matter but it was withdrawn. The Plaintiff produced the title deed in her name of the said suit property and the green card as exhibits in this matter to prove ownership. The Plaintiff wishes to abandon the prayer for damages for loss of use.

Mr. J.V. Juma Advocate for the Plaintiff reiterated the Plaintiff's evidence in his submissions and stated that the Plaintiff had produced the title documents of the said parcel of land proving ownership. The Defendant entered appearance but have failed to file any defence.

This court has considered the Plaintiff's case. The Defendant was served but failed to attend court. On the 26th May 2016 the Court had granted a temporary injunction against the Defendant pending the final

determination of this matter and the application was not opposed. The Defendant entered appearance way back on the 26th July 2016 through his Advocates Lugadiru and Company, but no defence has been filed in this suit to date hence, I have no defence to consider.

Section 24(a) of the Land Registration Act provides as follows:

“Subject to this Act, 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.”

Section 26 (1) of the Land Registration Act states as follows:

“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –

a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or

b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

Looking at the facts of this case, the Plaintiff has produced documents in her assertion of ownership over the disputed parcel of land, namely the Title Deed and the Green Card showing the ownership and history of the said parcel of land. This evidence has not been challenged. I therefore find that the Plaintiff is the registered owner of the suit parcel of land namely number WEST BUNYORE/EBUSIKHALE/114 and I grant the following prayers;

1. an eviction order
2. a permanent injunction restraining the Defendant from encroaching, cultivating, constructing and or otherwise dealing with the land parcel number WEST BUNYORE/EBUSIKHALE/114 by himself, his family members, servants, agents and those claiming through him.
3. Costs of this suit to the Plaintiff.

The prayer for damages for loss of use was not proved and was abandoned by the Plaintiff.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 28TH DAY OF FEBRUARY 2017.

N. A. MATHEKA

JUDGE