



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC. CASE NO. 1285 OF 2013

KARIUKI KAMAU.....PLAINTIFF

VERSUS

NANCY WANJIRU GICHERU.....1ST DEFENDANT

ANTHONY GICHERU KAMAU.....2ND DEFENDANT

NANCY WANGUI KAMAU.....3RD DEFENDANT

CLEMENT KARIUKI KAMAU4TH DEFENDANT

JUDGMENT

This suit was filed by way of a Plaint dated 15th October 2013 and filed on 29th October 2013 in which the Plaintiff seeks for judgment to be entered in his favour as follows:

- a. That the Defendants do vacate the 3 rooms they occupy in the Plaintiff's parcel of land identified as Kiambaa/Thimbigua/1121 (hereinafter referred to as the "suit property") forthwith;
- b. That the Defendants be ordered to pay to the Plaintiff mesne profits of Kshs. 5,000/- per month from 1st August 2013 until they vacate the 3 rooms aforementioned; and,
- c. Costs of this suit.

Interlocutory judgment was entered against the 2nd and 3rd Defendants on 7th January 2014 and against the 1st and 4th Defendants on 8th February 2015.

The hearing of this suit proceeded on 8th October 2014 when the Plaintiff, Kariuki Kamau, testified and stated that he is the registered proprietor of the suit property. As evidence of this, he produced a copy of an Official Search. He stated that he built some iron sheet houses on the suit property for renting out. He further testified that sometime in the year 2006, he gave the 1st Defendant and her three children being the 2nd, 3rd and 4th Defendants 3 iron sheet houses on the suit property to live in as they were destitute and he sympathized with them. He stated further that he agreed to educate those children until one of them could support the rest upon which they would vacate the suit property. He further testified that the 2nd

Defendant, Anthony Kamau, completed Form 4 and got a job with a company called Clayworks in March 2013 earning a monthly salary of Kshs. 20,000/-. He stated that on 1st August 2013, he requested the Defendants to vacate the suit property but they refused. He stated that his Advocate also wrote to them asking them to vacate but again they refused to do so. He sought for them to be evicted by court order and be paid the sum of Kshs. 5,000/- per month as mesne profits for their continued occupation of the 3 rooms.

The main issue to determine is this suit is whether or not the Plaintiff is entitled to an eviction order directed at the Defendants to vacate the 3 rooms they occupy on the suit property. In addition, the court shall determine whether or not the Plaintiff is entitled to the mesne profits he claims and who shall bear the costs of this suit.

The Plaintiff has asserted that he is the registered proprietor of the suit property. Evidence to support this assertion was presented by the Plaintiff to this court in the form of a Certificate of Official Search which did indeed show that the Plaintiff is the title holder of the suit property. The position of the holder of a title deed over a parcel of land is well stated in **Section 26(1)** of the **Land Registration Act** provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... 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.”

In this suit, the Plaintiff’s title deed has not been challenged by any of the Defendants. The court therefore arrives at the finding that the Plaintiff has proved that he is the duly registered owner of the suit property including the 3 rooms that the Defendants occupy. With this finding, it follows that the Plaintiff has the rights over the suit property as set out in **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.”

One of the rights belonging to absolute ownership of land is the right to possession of the same to the exclusion of all others. This is precisely the right that the Plaintiff is seeking in this suit. This court has no difficulty in finding that indeed the Plaintiff is entitled to occupy the suit property to the exclusion of the Defendants. The Plaintiff is therefore entitled to vacant possession of those 3 rooms and the court hereby issues an eviction order directed at the Defendants to vacate the suit property within 15 days of the delivery of this Judgment.

Further to the above, this court agrees that the Plaintiff is entitled to mesne profits commensurate to the rent proceeds he would have received for the 3 rooms occupied by the Defendants from the date that they were requested to vacate being 1st August 2013 to the date of actual vacation. Prayer no. (b) of the Plaintiff is allowed.

Finally, costs of this suit are awarded to the Plaintiff.

It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF MARCH 2017.

MARY M. GITUMBI

JUDGE