



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KISII

CASE NO. 76 OF 2013

AJONI ADEDE

(Suing in his capacity as administrator of the

Estate of TIMOTHY ELIJAH ADEDE (Deceased)PLAINTIFF

VERSUS

JAMES ADOYO DEFENDANT

J U D G M E N T

1. The plaintiff instituted the present suit vide a plaint dated 14th February 2013 filed in court on 21st February 2013. The plaintiff claims that the defendant has illegally and without any colour of right trespassed and occupied a portion of the plaintiff's late father's land parcel **No. North Mugirango/Magwagwa II/270**. The plaintiff avers that the defendant has started developing and using the entire parcel of land and despite demand to cease the acts of trespass and notice to sue, the defendant has not ceased the unlawful trespass and unlawful use of the suit land.

2. The plaintiff seeks judgment against the defendant for:

- a. **A declaration that the plaintiff's late father is the legal owner of land parcel No. North Mugirango/Magwagwa II/270;**
- b. **An order directing the defendant to remove at his own costs all the developments on the land and give vacant possession to the plaintiff.**
- c. **A permanent injunction against the defendant by himself his servants or agents from interfering with the peaceful occupation and enjoyment of the land.**
- d. **An order directing the defendant to compensate the plaintiff for loss of land from the time the defendant illegally occupied the suit land until the time he gives vacant possession.**
- e. **Interest on loss of income and costs at court rates.**
- f. **An order that the defendant pay costs of and incidental to this suit.**

3. The defendant was served with summons to enter appearance as per the affidavit of service dated 25th February 2013 sworn by one William Ogwara and filed a memorandum of appearance dated 12th March 2013 through the firm of Nyariki & Company Advocates. The defendant did not file any defence and the

suit was fixed for formal proof hearing before me on 28th March 2017. A hearing notice was served on the defendant as per the affidavit of service sworn by one, Michael Otieno filed in court on 28th March 2017.

4. On 28th March 2017 only the plaintiff and his advocate attended and the plaintiff testified as the sole witness in support of the plaintiff's claim. The plaintiff affirmed that he is the administrator of the estate of his late father one, Timothy Elijah Adede (deceased) and produced a certificate of confirmation of granted dated 14th December 2012 included in his bundle of documents as PEx.1 which confirms the letters of administration were issued to him. The plaintiff testified that his late father was the registered owner of land parcel **North Mugirango/Magwagwa II/270** and produced a copy of the title as PEx.2 which shows that Timothy Elijah Adede (plaintiff's deceased father) was registered as owner of the land on 1st April, 1982 when he was issued with the title.

5. The plaintiff explained that the defendant commenced trespassing onto the land in 2013 when he started cultivating a portion thereof and leasing out the rest of the land to third parties. He stated the defendant has constructed a temporary structure on the land and that even though he has requested the defendant to vacate the land he has failed to do so. The plaintiff stated that he did not know the defendant before he commenced the acts of trespass. The plaintiff further stated that before 2013 his step mother was utilizing the land for cultivation. The plaintiff asserts the defendant has no right or basis to be on the land and seeks orders that he vacates from the land.

6. I have considered the pleadings and the evidence by the plaintiff which was unchallenged and I am satisfied that indeed the land the subject of the suit was registered in the plaintiff's deceased father's name. He has been so registered from 1982 and this is prima facie evidence of ownership. Sections 24, 25 and 26 of the Land Registration Act, 2012 confers and vests absolute ownership rights on the registered owner/proprietor. Such rights are absolute and indefeasible and can only be challenged on grounds of fraud and/or if it is established the registration of the person as such owner was procured unprocedurally or through a corrupt scheme.

7. The defendant never filed any defence and as such the plaintiff's evidence remains uncontroverted that the defendant has illegally entered into the suit property and he is in trespass of the suit property. The court has no other evidence to go by and in the premises finds and holds the defendant is a trespasser in land parcel **No. North Mugirango/Magwagwa II/270** which belongs to the estate of the plaintiff's deceased father in respect of which the plaintiff is the administrator.

8. The plaintiff has made a claim for compensation for loss of use of the land. The plaintiff has however not laid any basis for such an award as he has not shown he was infact utilizing the land for any purpose and was prevented to carry on with such activities by the defendant's transgressions. The award for damages for loss of user is thus not maintainable.

9. On the basis of the evidence presented by the plaintiff which was not challenged I am satisfied that the plaintiff has established and proved his case on a balance of probabilities. I accordingly enter judgment in favour of the plaintiff as against the defendant on the following terms:-

1. That a declaration be and is hereby made that Timothy Elijah Adede (deceased) is the lawful owner of land parcel No. North Mugirango/ Magwagwa II/270.

2. That the defendant is in unlawful trespass of the said land parcel No. North Mugirango/Magwagwa II/270 and is hereby ordered to vacate the same within 30 days of being served with the decree herein failing which an eviction order for the forcible removal of the defendant to issue on application by the plaintiff.

3. The costs of the suit are awarded to the plaintiff.

Judgment dated, signed and delivered at Kisii this 21st day of April, 2017.

J. M. MUTUNGI

JUDGE

In the presence of:

Ms. Mirei for Oguttu for the plaintiff

N/A for the defendant

Milcent court assistant

J. M. MUTUNGI

JUDGE