



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT AT MACHAKOS

CIVIL SUIT NO. 47 OF 2010

TAMARIND MEADOWS LIMITED.....PLAINTIFF

VERSUS

ATHI FARM DEVELOPMENT LIMITED.....1ST DEFENDANT

FRIDA AFANDI.....2ND DEFENDANT

GEORGE SAM ONYANGO.....3RD DEFENDANT

DANIEL GICHANGI KARIUKI.....4TH DEFENDANT

JOHN FREDRICK ONYANGO.....5TH DEFENDANT

JUDGMENT

Introduction

1. This suit was commenced by way of a Plaint dated 1st March, 2010.
2. In the Plaint, the Plaintiff averred that it is the registered proprietor of Land Reference number 337/1642 situated in Athi River in Machakos County; that the Plaintiff has been in possession of the said land and has fenced it and that on or about 2nd February, 2010, the Defendants trespassed on the suit land.
3. The Plaint sought for an order of a permanent injunction to restrain the Defendants from entering upon the suit land and for general damages for trespass.
4. The Defendants filed their joint Defence and Counter-claim dated 28th April, 2010.
5. In their Defence, the Defendants averred that the Plaintiff's claim is for Grant number I.R. 71610 whereas the Defendants' land is in respect to Grant number I.R. 60354; that they have fenced their land and that after investigations, the Commissioner of lands found that the Plaintiffs title was not reflected in the records at the Ministry of Lands.
6. In the Counter-claim, the Defendants prayed for the dismissal of the Plaintiff's Plaint and for a declaration that the 1st Defendant is the registered owner of L.R. No. 337/1642 and Grant No. I.R. 60354. The Defendants also claimed for general damages and for the costs of the counter-claim.

The Plaintiff's Case.

7. When the matter came up for hearing on 15th March, 2017, neither the Plaintiff nor its advocate were in court.
8. The court proceeded to dismiss the suit for non-attendance and for want of prosecution.
9. The matter proceeded for the hearing of the Defendants' counter-claim.

The Defendants' case.

10. The 1st Defendant's Director, who is also the 3rd Defendant, PW1, informed the court that the 1st Defendant purchased the suit land from Stallion Insurance Company Limited (in Liquidation) after conducting an official search.
11. According to DW1; the 1st Defendant purchased the suit land for kshs. 6,760,000 and that the said land was transferred to the 1st Defendant.
12. DW1 informed the court that they obtained permission to fence the land from the then Mavoko Municipal Council on 1st February, 2010 only to be denied access to the land; that the Defendants then lodged a complaint with the Athi River Police Station and that when a meeting was scheduled at Ardhi house to resolve the dispute, the Plaintiff's representative never turned up.
13. DW1 produced in evidence the Grant number I.R. 60334 dated 30th August, 1993 and an official search showing that the said land was registered in favour of the 1st Defendant on 28th August, 2009.
14. DW1 also produced the Sale Agreement that the 1st Defendant entered into with Stallion Insurance Company Limited (in liquidation) on 6th July, 2006, together with the Transfer document dated 10th March, 2009.

Findings

15. The Plaintiff's Plaint was dismissed by the court for want of prosecution and non-attendance.
16. The court received from DW1 documents showing that it purchased a parcel of land which was registered as Grant number 1.R. 60354.
17. According to the Sale Agreement that was entered into between the 1st Defendant and Stallion Insurance company Limited (in liquidation), the 1st Defendant purchased L.R.No. 337/1642 for kshs. 6, 760,000.
18. After paying the requisite stamp duty, the rates and the land rent, the suit property was transferred to the 1st Defendant on 28th August, 2009.
19. The evidence before me shows that the Defendant is the proprietor of L.R. No. 337/1642.
20. In the absence of evidence to the contrary, I find that the Defendants herein have proved their Counter-claim on a balance of probabilities.
21. For those reasons, I allow the Defendants' Counter-claim dated 28th April, 2010 in the following terms;

a) A declaration be and is hereby issued that the 1st Defendant is the registered proprietor of Land Reference number 337/1642 and Grant number 60354.

b) The Plaintiff to pay the costs of the suit and the Counter-claim.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 19TH DAY OF MAY, 2017.

O. A. ANGOTE,

JUDGE.