



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE NO. 236 OF 2016

JOHN MAGETO NYACHIEO.....PLAINTIFF

VERSUS

JOHN KINYUA.....DEFENDANT

JUDGEMENT

(A suit where plaintiff seeks declaration that he is the registered owner of a parcel of land and an eviction order against the defendant; plaintiff having produced title deed and there being no controverting evidence from the defendant, has proven ownership, defendant given a limited period within which to vacate and in default eviction to be done)

1. The plaintiff filed this suit on 30th June 2016 pursuant to plaint dated the same date. It is averred in the plaint that the plaintiff is the registered proprietor of land known as Nakuru/Molo (Kapsita) 97. The plaintiff accuses the defendant of invading the land and dispossessing the plaintiff. The plaintiff thus prays for judgment against the defendant as follows:

(a) The plaintiff herein is the legal owner of the suit land herein known as Land reference Number NAKURU/MOLO (KAPSITA) 97.

(b) Permanent injunction restraining the defendant herein/his agents/servants from invading/grabbing/interfering with the plaintiff's quiet enjoyment of the said suit land herein.

(c) Eviction order against the defendant/his agent/servants from Land Reference Nakuru/Molo (Kapsita/97 measuring approximately [sic].

(d) Any other relief this honourable court may deem fit to grant.

2. Despite being served with summons to enter appearance, the defendant neither entered appearance nor filed any defence. Similarly the defendant never attended the hearing despite being served with a hearing notice. Consequently, the hearing proceeded without the defendant's participation.

3. John Mageto Nyachieo, the plaintiff testified as PW1. He told the court that he bought the suit property Nakuru/Molo (Kapsita) 97 measuring approximately 202 hectares from one Redempta Nabangala in the year 2005. He occupied the land and constructed a semi-permanent structure on it. Since then he has been using the land and has planted some trees on it. He is the registered owner pursuant a title deed that was issued on 5th May 2005 and there is no encumbrance against the title. He produced a copy of the title deed as P. Exhibit No. 1. He also produced a map of the area as P. Exhibit No.2. It shows his plot as 97. He used the land from the year 2005 to 2016 when the defendant and many

people carrying crude weapons came and chased him away. He had to run away. He reported to village elders who referred him to the police. The police did not assist him and so he brought the matter to this court. He told the court that the defendant is still using the land and is in occupation now and is cultivating it. The defendant and the invaders demolished his house.

4. PW2 was Justus Kibagendi Nyachieo. He told the court that he is a farmer in Kapsita, Molo and that the plaintiff is his neighbour. He further told the court that the plaintiff was using the suit land from the year 2005 until the year 2015. That in the year 2016 the defendant came and removed the plaintiff from the land by force. Since then the defendant is using the land. He testified that he was present and saw the defendant removing the plaintiff from the land. That the defendant is currently in occupation of the land.

5. I have considered the plaintiff's case as pleaded in the plaint and the evidence tendered in support. The issues for determination are whether the plaintiff is the registered proprietor of the suit land herein known as Land reference Number NAKURU/MOLO (KAPSITA) 97; whether the defendant evicted the plaintiff and is currently in occupation of the plot; and finally whether the plaintiff is entitled to the relief sought.

6. From the evidence tendered by the plaintiff and in view of the copy of the title deed produced as P. Exhibit No. 1, I have no hesitation in finding that the plaintiff is indeed the registered proprietor of all that land known as Nakuru/Molo (Kapsita) 97. Under section 26 of Land Registration Act the certificate of title is conclusive evidence of proprietorship. As registered proprietor he is entitled to all the rights and privileges conferred by sections 24 and 25 of the Land Registration Act as well as Article 40 of the constitution.

7. As regards whether or not the defendant evicted the plaintiff from the suit property and whether the defendant is occupying it, there is uncontroverted evidence that indeed the defendant did so. The plaintiff's testimony that the defendant led a group of armed men who dispossessed him of the property and that the defendant has since remained in occupation of the property has not been challenged. Indeed, the plaintiff's testimony has been corroborated by the testimony of PW2.

8. I therefore find that the plaintiff has proven his case. Consequently, I enter judgment in favour of the plaintiff as follows:

a) I declare that the plaintiff herein is the legal owner of the suit land herein known as Land reference Number Nakuru/Molo (Kapsita) 97.

b) The defendant, his agents or servants to vacate Land Reference Nakuru/Molo (Kapsita) 97 within 30 (thirty) days of service of these orders upon the defendant. In default, the defendant his agents or servants be evicted from Land Reference Nakuru/Molo (Kapsita) 97. The eviction to be in accordance with the provisions of section 152G of Land Act, 2012.

c) I grant a permanent injunction restraining the defendant herein, his agents or servants from invading or interfering with the plaintiff's quiet enjoyment of Land Reference Nakuru/Molo (Kapsita) 97.

d) The plaintiff is awarded costs of the suit

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 27th day of July 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Mwangi holding brief for Mr. Ogeto for the plaintiff

No appearance for the defendant

Court Assistant: Gichaba