



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC.NO.30 OF 2017

(FORMERLY KERUGOYA ELC NO.44 OF 2016)

JOSEPH NDUNG’U MURUNYU.....PLAINTIFF

-VERSUS-

GEORGE NGUGI MURUNYU.....1ST DEFENDANT

EUNICE MWENDE MURUNYU.....2ND DEFENDANT

BETH WANJIKU KIRIKA.....3RD DEFENDANT

JUDGEMENT

By a ***Plaint*** dated ***7th April 2016***, the Plaintiff herein has lodged a claim against the Defendants and sought for these orders:-

a) A permanent injunction restraining the Defendants/Respondents whether by themselves, their agents and/or servants from dealing, interfering, alienating, and/or in any way encroaching all that land parcel known as Ngenda/Kimunyu/1695.

b) Costs in the suit.

In his claim, the Plaintiff has alleged that he is the registered owner of ***LR.No.Ngenda/Kimunyu/1695***, having inherited the same from his late father ***Murunyu Gatonye (deceased)***. He further alleged that he lives on the suit property with his family. However, it was his contention that since he acquired the title to the suit property, the Defendants have taken upon themselves to harass the Plaintiff by

trespassing into his compound and destroying the crops and other structures thereon. It was his further contention that such behaviours have caused breach of peace, mental and psychological torture. He therefore urged the Court to issue permanent injunction preventing them from trespassing into the Plaintiff’s property.

The Defendants though served with ***Summons to Enter Appearance*** on ***18th April 2016***, as per the ***Affidavit of Service*** of ***David Kihia Muraya***, failed to enter appearance nor file their Defence. The matter therefore ***proceeded for formal proof***, on ***20th March 2017***, wherein Plaintiff herein gave evidence for himself and called no witness.

In his evidence in Court, the Plaintiff stated that the Defendants are his brother and sisters and they have occasionally trespassed on his suit property ***Ngenda/Kimunyu/1695***. He produced a title deed to that

effect as **exhibit no.1**. He also alleged that the Defendants have destroyed his properties and crops on this parcel of land which they have done occasionally. He urged the Court to allow his claim.

The Plaintiff thereafter filed Written Submissions which this Court has considered together with the pleadings and the exhibits thereto.

It is evident that the Plaintiff herein has alleged. He therefore has a duty of proving his case on the required standard of balance of probabilities. If no sufficient evidence is brought out, then the Court will have no option but to dismiss the suit for being unmerited and for lack of sufficient evidence. See the case of ***Tanzania Saruji Corporation..Vs..Africa Marble Co.Ltd (2002) 2 EA 613 (CAT)***, where the Court held that:-

“The duty was on the judge to examine the evidence and the law and make a judicious decision and it is no answer to the Judge’s apparent inattention to the evidence that he did not have the advantage of the arguments”.

The Plaintiff herein has alleged that he is the owner of the suit land herein ***Ngenda/Kimunyu/1695***, as is evident from the ***Title Deed*** produced in Court as ***exhibit 1***. The said ***Title Deed*** was issued on ***30th September 2015***, and as provided by Section 26(1) of the Land Registration Act, then the Plaintiff as the registered owner is deemed to be the absolute and indefeasible proprietor of this suit property.

As an absolute and indefeasible proprietor herein, the Plaintiff has his rights protected under Sections 24 and 25 of the Land Registration Act. Section 24(a) of the Land Registration Act provides as follows:-

24. Subject to this Act:-

a) 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:

Further, these rights cannot be defeated except as provided by the law. See Section 25(1) of the Land Registration Act which states:-

25.(1) The rights of a Proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever;

The Plaintiff has alleged that the Defendants have trespassed on his suit Property and destroyed his property thereon and his crops. The Defendants did not appear in Court to controvert that evidence. The Court therefore finds that ***the Plaintiff’s rights to ownership which includes quiet enjoyment to the said property, access to it and free from any disruption has been breached by the Defendants***. Therefore the Defendants ought to be restrained through a permanent injunction.

Consequently, this Court finds that the ***Plaintiff herein has proved his case on a balance of probabilities***. For the above reasons, ***the Court enters judgment for the Plaintiff against the Defendants jointly and severally as prayed in the Plaint in terms of prayer no.(a) with no orders as to costs***.

It is so ordered.

Dated, Signed and Delivered this **29th** day of **September, 2017**.

L. GACHERU

JUDGE

29/9/2017

In the presence of

Mr. Mbiyu for Plaintiff

No appearance for 1st Defendant

No appearance for 2nd Defendant

No appearance for 3rd Defendant

Lucy - Court clerk.

L. GACHERU

JUDGE

29/9/2017

Court – Judgement read in open Court in the presence of Mr. Mbiyu for the Plaintiff and absence of the Defendants.

L. GACHERU

JUDGE

29/9/2017