



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC. CASE NO. 323 OF 2014

MICHAEL JAMES KARANJA.....PLAINTIFF

VERSUS

BORO KABITHIA.....1ST DEFENDANT

MARGARET WAMBUI.....2ND DEFENDANT

JOSEPH MATHERI CHEGE.....3RD DEFENDANT

GEORGE GATONYE KARANJA.4TH DEFENDANT

GEOFREY NJAGA GITHUA.....5TH DEFENDANT

KINYANJUI KAMONDIA.....6TH DEFENDANT

MOSES KARANJA7TH DEFENDANT

MBURU GITHUA.....8TH DEFENDANT

MBURU NGURUKO.....9TH DEFENDANT

NJENGA KAIBUTI.....10TH DEFENDANT

NJENGA KARIUKI.....11TH DEFENDANT

JUDGMENT

This suit was filed by way of a Plaint dated and filed on 18th March 2014 in which the Plaintiff sought for judgment to be entered against the Defendants as follows:

1. An interim order do issue to force the Defendants by themselves or their servants not to erect upon, cultivate or use the parcel of land known as Karai/Lussigeti/T1038 (hereinafter referred to as the “suit property”).

2. A declaratory order that the Defendants be compelled to vacate the suit property.

3. Costs of this suit.

The Pleadings

In the Complaint, the Plaintiff stated that he is the registered owner of the suit property. He further stated that the Defendants have intruded into the suit property and were utilizing it without his consent or authorization. It is for this reason that he filed this suit in order to evict them out of the suit property.

The Defendants did not enter appearance or file a defence in this suit and upon the request of the Plaintiff, interlocutory judgment was entered against them on 10th June 2014 and the matter proceeded for formal proof before Lady Justice Pauline Nyamweya on 22nd April 2015.

The Evidence

The Plaintiff was the only witness when he testified that he is the registered proprietor of the suit property. As evidence of this assertion, the Plaintiff produced copies of his title deed and green card for the suit property. He also produced a copy of the sale agreement, transfer form and land control board consent documents to show how he bought the suit property. It was his testimony that the Defendants have invaded the suit property after he purchased the same. It was his prayer that the Defendants be evicted out of the suit property and he be allowed to take possession of the suit property as the registered owner.

Issues and Determination

The only issue that arises in this suit for determination is whether or not the Plaintiff is the duly registered proprietor of the suit property and if so whether he may be granted the order evicting the Defendants from the suit property.

In his assertion of ownership of the suit property, the Plaintiff produced a copy of a Sale Agreement dated 16th January 2014 which shows that he purchased the suit property from one Scolasticah Wambui Gathogo at a purchase price of Kshs. 1 million. He further produced a copy of the Transfer Form in which the said Scolasticah Wambui Gathogo transferred to him the suit property. He produced an Application for Consent of Land Control Board as well as the Letter of Consent issued by the Kikuyu Divisional Land Control Board indicating that he was granted consent for the transfer of the suit property to himself. He further produced a copy of the title deed that was issued to him on 28th February 2014, a copy of the green card and Certificate of Official Search dated 23rd April 2015, all of which indicated that he was indeed the registered proprietor of the suit property. The law is very clear on the position of a title holder of land such as the Plaintiff. 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.

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.”

I find that the Plaintiff is entitled to have vacant possession of the suit property to the exclusion of the Defendants. In light of the foregoing finding, I hereby proceed to enter judgment in this suit as prayed in the Plaintiff with costs to the Plaintiff.

DELIVERED, SIGNED AND DATED AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2017.

MARY M. GITUMBI

JUDGE