



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**

**ELC NO. 106 OF 2017**

**GEORGE NG'ANG'A MBURU**

**PLAINTIFF**

**VS**

**JOHN MURIGI alias JOHN**

**MUNYUA WAWERU**

**DEFENDANT**

**JUDGMENT**

1. By an amended plaint filed on 13/04/2014 the plaintiff moved this court for judgment against the defendant for the following orders;

- a) Eviction order against the defendant, his servants, agents or anybody howsoever claiming through him from LOC.11/MUCHUNGUCHA/2264.
- b) An order directing the Land Registrar to withdraw caution lodged on Land Parcel No. LOC.11/MUCHUNGUCHA/2264.
- c) Damages for trespass
- d) Costs of this suit.

2. There is evidence on record that the defendant was served with the summons but failed to enter appearance and neither did he file a defence. Consequently, and this being a land matter the case was set down for hearing of the formal proof. The evidence of the Plaintiff is uncontroverted.

3. When the matter came up for formal proof on 18/7/2014 the plaintiff relied on his statement dated 16/04/2017 on record as his evidence in chief. In that statement he states that he bought the suit land parcel no. LOC.11/MUCHUNGUCHA/2264 from one Josphat Muiruri alias John Muiruri Tirus Mbogo in the year 2005 and a title was duly issued to him on 25/06/2005. The defendant sued the plaintiff herein together with the vendor in Nairobi High Court Civil Case No. 1058/2005 which was later transferred to Nyeri as ELC 609/2014 in which a judgment was delivered in favour of the plaintiff when his ownership of the suit property was upheld. That the defendant has been in occupation of the suit property since then and his efforts to get him to deliver vacant possession to the plaintiff have been futile. That his continued occupation of the suit land amounts to trespass and he should be evicted.

4. The plaintiff then filed written submissions on 26/09/2017 seeking that the eviction orders do issue against the defendant who has refused to vacate the plaintiff's land. That the plaintiff has legal title to the land and therefore he deserves to have quiet enjoyment of his property. The defendant has gone to court twice over the suit property and lost.

5. Has the plaintiff made up a case for being granted the orders sought? With regard to this question, from the evidence adduced by the plaintiff in support of his claim, I entertain no doubt that he is the registered proprietor of the suit properties. In this regard see certificates of official search in respect to the suit land which the plaintiff produced and dated the 11<sup>th</sup> April 2011, copy of the title deed registered in the name of the Plaintiff dated 27/6/05 together with the Judgement of the Honourable Court delivered on 19<sup>th</sup> November 2015 in ELC NO 609 OF 2014.

6. By dint of the provisions of Section 24 of the Land Registration Act, No.3 of 2012 as the registered proprietor of the suit properties, the plaintiff is entitled to all the rights conferred on a registered proprietor of land by law. It states as follows;

“ (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.”

Under Section 25 of the Act, the rights conferred on a registered proprietor of land cannot be defeated except as provided in the Act. The said provisions of the law confer on a registered proprietor of land the right to hold land in respect of which he is the registered proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever.

7. Section 26 (1) of the said Act thereunder, imposes an obligation on this court to take a certificate of title issued by the Registrar upon registration, as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner of the land.

8. It is the plaintiff's case that being the legal owner, the continued occupation of the defendant on the suit property amounts to trespass for which he must be removed by the Court through an order of eviction. The said trespass has in effect curtailed the plaintiff's enjoyment of his right of ownership of the suit property. The plaintiff has sought orders for eviction and in the circumstances of this case, there being no evidence that the title held by the plaintiff is subject to any of the limitations contemplated in law, I find and hold that the plaintiff has made up a case for being granted the orders of eviction sought.

9. In view of the findings above, I order that the caution registered on the suit land on the 9/10/06 be removed as the same is serving no purpose. Section 71 (1) of the Land Registration Act No 3 of 2012 provides that a caution may be withdrawn by the cautioner or removed by order of the Court or by the Registrar. I find and hold that this caution does not serve any purpose as the land is determined to belong to the plaintiff and the same stands removed.

10. Trespass to land has been defined as consisting of “any unjustifiable intrusion by one person upon land in the possession of another”, (**see, Clerk & Lindsell on Torts, 18th Edition at paragraph 18-01**). The plaintiff having been determined as the rightful owner of the suit land effective the 19<sup>th</sup> November 2015, any unauthorized occupation of the land by the defendant amounts to an actionable tort of trespass. Though the plaintiff has not presented any amount being damages for trespass, I hold and find he is entitled to some form of damages for trespass. This being general damages, I exercise my discretion and award a nominal amount of Kenya Shillings Twenty Thousand Only (Kshs. 20,000/-) as damages for trespass.

11. In conclusion the final orders are as follows; -

**a) An order do issue for the eviction of the defendant his servants agents or anybody howsoever claiming through him from Loc11/Muchungucha/2264.**

**b) The eviction to be carried out as per the provisions of the law.**

**c) The Land Registrar Murang'a be and is hereby ordered to remove the caution lodged on the suit property by the defendant.**

**d) The defendant is liable to pay Kshs 20,000/- being nominal damages for trespass to the**

**Plaintiff.**

**e) Costs of this suit shall be payable by the defendant.**

**DELIVERED, DATED AND SIGNED AT MURANG'A, THIS 16TH NOVEMBER 2017.**

**J. G. KEMEI**

**JUDGE**