



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE NO. 192 OF 2014
THOMAS KIBIRU GATHUMBIPLAINTIFF
VERSUS
JUMIA MOSQUE DEFENDANT

JUDGMENT

1. In his amended plaint filed in this court on 28/1/2015 the plaintiff has sought the following orders against the defendant:-

- (a) A declaration the plaintiff is the legal owner of LR. 209/4401/740.
- (b) That there declaration the defendant is a trespasser on the said land Parcel Number LR.209/4401/740.
- (c) Eviction order against the defendant and its agents
- (d) General damages for (a)
- (e) Costs of the suit.

THE PLAINTIFF’S CASE

2. The basis of the plaintiff’s claim is that he is the registered proprietor of all that plot known as **LR No. 209/4401/740**. The plaintiff avers that the defendant has trespassed and unlawfully remained on the plaintiff’s said land and has failed to heed notice to vacate or deliver vacant possession of the suitland to the plaintiff hence occasioning the plaintiff loss and damage.

THE DEFENDANT’S CASE

3. In its defence filed on 16/4/2014 the defendant describes itself as **Masjid Hamza Muslim**. The defendant denies the plaintiff’s claim and states that if the plaintiff is the owner, the title documents that he holds are “*illegal, invalid and void*”.

4. The defendant maintains that the lease registered on 17/8/2012 pursuant to the **Registration of Titles Act Cap 281** which had been repealed by **Act No. 2 of 2012** on 2/5/2012.

5. It also holds that the City Council of Nairobi was not in existence as at 10th August, 2012 and therefore had no capacity to lease out “**any Government land**”. These issues were however not addressed by the

defendant in evidence.

6. The defendant denies that it has trespassed or remained on the plaintiff's land and puts the plaintiff to strict proof.

7. It is the defendant's case that it applied to the defunct City Council of Nairobi for land for their place of worship. Pursuant to that request the defendant was allocated the open space between plot Nos. **783** and **198** and it have been on the said plot since the year **2007**. Therefore according to the defendant, the plaintiff's demand for it to vacate or give the plaintiff vacant possession is misplaced and baseless.

8. The court issued an order on 30/3/2017 directing as follows:-

(1) That the Director of Surveys Nairobi City County do visit the site, file a report on the extent of properties mentioned in this suit that is the boundaries of Plot No. LR.209/4401/740 vis-a-vis the remaining open space. The report is to be filed within 21 days.

(2) That OCS Jogoo Road Police Station to provide security during the survey exercise.

(3.) That Parties are at liberty to be present and they are to be issued proper Notice by the Director as to time.

9. Pursuant to that order, a report was filed in court by the Deputy Director Land Survey and GIS Department in the Nairobi City County. The report dated 15/5/2017 stated that the ground survey for LR.209/4401/740 had been carried out and it established that the parcel is fully occupied by Jumia Mosque, that is, the defendant.

10. The matter came up for hearing on 30/3/2017. The plaintiff gave evidence. He stated that LR.209/4401/740 which he owns is in Makadara in Nairobi. He adopted the written statement which he had filed in the court record on 21/2/2014 as his evidence-in-chief. He said he had tried all he could to get the defendant out of his premises in vain. The defendant is said to have put up a *mabati* structure on the premises and they do not have title to the land. He prayed that they be evicted from the premises.

11. The plaintiff produced P. Exhibit 1-4 comprising of the copies of the letter dated 25/10/2003 from the plaintiff's counsel demanding that the defendant do vacate the premises within 30 days.

12. A copy of lease from the City Council of Nairobi in favour of the plaintiff was produced as P. Exhibit 2. It shows that the Council, being the registered proprietor as lessee from the Government of the Republic of Kenya for the term of 99 years from 1st November, 1953 of all that land known as LR. No. 209/4401/740 caused the land to be subdivided into separate plots and has named the same as Makadara Housing Estate.

13. The copy of lease also shows that in consideration of the sum of **Kshs.12,000/=** paid by the plaintiff the Council has agreed to grant a lease to the plaintiff of the plots.

14. On the lease documents the plot is referred to as Land Ref. No. 209/4401/740. It is clearly delineated on the Survey Plan No. 329806 a copy of which was attached to the lease.

15. It is apparent that the lease was received at the Department of Lands on 17/8/2012 and registered. No objection was raised to the production of these documents at the hearing.

16. The defendant on the other hand called one **Makime Masoud Waiganjo** to testify. He stated that the Mosque land was acquired from the City Council of Nairobi in the year 2007. He said that the Mosque applied for an open space in Makadara Estate which had been used as a playing field but upto the date of the hearing they had not received any response from the former City Council of Nairobi or the current County Government of Nairobi.

17. It appears that there was a tussle between the plaintiff and the defendant which culminated in the matter being taken before the District Commissioner.

18. DW1 produced correspondences between the City Council of Nairobi and the Chief Hamza Estate, Makadara; the defendant and the Chief Valuer, City Council of Nairobi, the City Council of Nairobi and the District Officer Makadara, Nairobi, and a response to the plaintiff's demand letter.

19. The plaintiff produced evidence to demonstrate that he is the proprietor of LR. No. 209/4401/740. The report submitted to court by the Deputy Director Land Survey & GIS, Nairobi City County confirmed that the plot claimed by the plaintiff exists and that it is fully occupied by the defendant.

20. I therefore find that LR No. Land Ref. No. 209/4401/740 which the defendant is occupying has already been alienated to the plaintiff. However, the defendant does not have any title documents over the land in question.

21. The defendant's mere occupation of the land is therefore without authority of the allocating authority. The defendant is only hopeful that a lease will issue to them even now.

22. However, if the plaintiff has been issued with the lease document, there is no possibility that the same land given to the plaintiff will be given to the defendant as that would amount to double allocation.

23. He has also not demonstrated the illegality of the plaintiff's title documents. I must say that no evidence was produced by the defendant to prove the fraud alleged in their defence in this matter.

24. In the absence of any proof of ownership by the defendant's, I find that such occupation of the suit premises is unlawful and amounts to trespass.

25. In my view the plaintiff has established his claim on balance of probabilities. I therefore enter judgement for the plaintiff against the defendant as prayed in the plaint.

26. For clarity, I therefore issue the following orders:

(a) It is hereby declared that the plaintiff is the legal owner of plot number 209/4401/740.

(b) It is hereby declared that the defendant is a trespasser on the said LR Number 209/4401/740.

(c) The defendant shall remove itself and its property from the said LR number 209/4401/740 within 30 days and in default the defendant shall be evicted from the premises.

(d) The claim for general damages is not allowed for lack of proof.

(e) The defendant shall bear the costs of this suit.

It is so ordered.

Signed at Kitale on this 9th day of October, 2017

MWANGI NJOROGE

JUDGE

Dated, signed and delivered at Nairobi on this 10th day of November, 2017.

K. BOR

JUDGE

Judgement read in open court at Nairobi on this 10th day of November, 2017:

In the presence of:

Mr. Thuo for the Plaintiff.

No appearance for the Defendant.

Court Assistant: V. Owuor

K. BOR

JUDGE