



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO.253 OF 2017

JOSEPH MUIRURI NJIRAINI - PLAINTIFF/APPLICANT

VS

JOYCE WANJIKU NGUGI - 1ST DEFENDANT/RESPONDENT

MARY WANJIRU MURIGI - 2ND DEFENDANT/RESPONDENT

THE DEPUTY REGISTRAR MURANG'A

LANDS REGISTRY - 3RD DEFENDANT/RESPONDENT

JUDGMENT

1. The Plaintiff Joseph Njiraini filed suit against the Defendants on 9/5/16 claiming Orders as follows;-

- a) That the 1st and 2nd Defendants and their agents be barred by way of a permanent injunction trespassing, cultivating and or interfering in any way with the Plaintiff's quite possession of all that piece of land known as MAKUYU/MAKUYU/BLK.1/9081.
- b) That the Plaintiff be declared as the lawful and bonafide owner of all that piece of land known as MAKUYU/MAKUYU/BLK.1/9081.
- c) That the 3rd Defendant do lift the caution registered by the 1st Defendant against all that piece of land known as MAKUYU/MAKUYU/BLK.1/9081.
- d) That the 1st and 2nd Defendant be ordered to uproot all and any vegetation planted by them or with their authority on the suit piece of land.
- e) Costs of this suit.
- f) Any other relief that this Court deems fit to grant.

2. It is the Plaintiff's case that the 1st and 2nd Defendants have without the Plaintiff's authority started cultivating the Plaintiff's Land Makuyu/Makuyu/Block 1/9081. In addition, that the 1st Defendant has lodged a caution on the suit property. The Plaintiff avers that the Defendant has no known interest in the suit properties and hence demand vacant possession and removal of the caution.

3. It would appear from the record that the 1st and 2nd Defendants filed their defence and counterclaim on

1/8/16 but the same was not served on the Plaintiff and on 11/5/17 the Plaintiff filed an application by Notice of Motion to strike out the 1st and 2nd Defendants defence for failure to serve the same on the Plaintiff. The application was not defended and the same was granted as prayed. The record shows that the 1st and 2nd Defendants have not attended Court since this suit was filed save for two instances on 24/5/16 and 20/7/16. The suit against the defendants therefore proceeded undefended.

4. The 3rd Defendant did not enter appearance nor filed a defence.

5. At the formal proof hearing the Plaintiff solely testified and stated that he is the registered owner of MAKUYU/MAKUYU/BLK1/9081. He produced a copy of title and official search to support his averment. That the 1st and 2nd Defendant are unlawfully tilling and cultivating his land. That further the 1st Defendant lodged a caution on the property claiming purchaser's interest on 1/2/16 which interest is unfounded.

6. I have considered the submissions made by the Plaintiff, the evidence given both in the written statement and at the formal proof hearing and the issue for determination is whether the Plaintiff is the owner of the suit property and whether the 1st Defendant lawfully lodged a caution on the property.

7. Section 26 of the Land Registration Act No. 3 of 2012 states as follows;-

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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.

The Plaintiff has produced a copy of a title registered in his name. In the absence of any evidence to the contrary this Court finds and holds that he is the registered proprietor of the suit land.

8. The Plaintiff testified that he and 1st Defendant had not entered into any agreement for sale in relation to the suit property and the 2nd Defendant was tilling the land unlawfully.

Having held that the Plaintiff is the registered proprietor of the suit land, and in the absence of evidence to the contrary the caution registered on the suit property on 1/2/16 has no basis and the same should be removed.

9. In conclusion I make Orders as follows; -

(a) That the 1st and 2nd Defendants and their agents be barred by way of a permanent injunction in trespassing, cultivating and or interfering in any way with the Plaintiff's quiet possession of all that piece of land known as MAKUYU/MAKUYU/BLK.1/9081.

(b) That the Plaintiff is hereby declared as the lawful and bonafide owner of all that piece of land known as MAKUYU/MAKUYU/BLK.1/9081.

(c) That the 3rd Defendant do lift the caution registered by the 1st Defendant against all that piece of land known as MAKUYU/MAKUYU/BLK.1/9081.

(d) That the 1st and 2nd Defendant be ordered to uproot all vegetation/crops planted by them or with

their authority on the suit piece of land.

(e) Costs of this suit shall be borne by the 1st and 2nd Defendants.

DELIVERED, DATED AND SIGNED THIS 7TH DAY OF DECEMBER, 2017

J.G. KEMEI

JUDGE