



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT T KERUGOYA

ELC CASE NO. 6 OF 2016

MURINGI WILLY.....1ST PLAINTIFF

THOMAS WAMBUGU NJOGU.....2ND PLAINTIFF

VERSUS

MERCY MUTHONI NJOGU.....DEFENDANT

JUDGMENT

On 18th January 2016 the plaintiffs filed this suit seeking the following orders against the defendant:-

(a) An order for the defendant, her agent or servant or employees or anybody claiming under her to vacate and remove their properties from L.R No. MUTIRA/KAGUYU/4433 and in default thereof they be forcefully evicted from the land at their own costs.

(b) General damages for trespass.

(c) Costs of this suit.

It is the plaintiffs pleadings that whereas they are the registered proprietors of land parcel No. MUTIRA/KAGUYU/4433 (the suit land), the defendant has without any colour of right or authority from the plaintiffs continued to occupy and use the same thus denying the plaintiffs quiet enjoyment and use thereof. Despite demand and notice to sue, the defendant has failed, refused and/or ignored the same hence this suit.

The record shows that the defendant was served with copies of summons to enter appearance on 29th January 2016 but did not enter appearance or file a defence.

On 18th February 2016, interlocutory judgment was entered against her and the case was listed for formal proof on 30th May 2016 when the 1st plaintiff (**MURINGI WILLY**) testified in support of the plaintiff's case.

In his testimony, the 1st plaintiff stated that he and the 2nd plaintiff (**THOMAS WAMBUGU NJOGU**) are the registered proprietors of the suit land and he produced the certificate of official search thereof (Exhibit 1). He added that although the defendant has land parcel No. MWERUA/GITAKU/1388 which belongs to her husband and although she had agreed to vacate the suit land, she has not done so. The plaintiffs' lawyer made a demand (Exhibit 3) before filing this case. There has been no compliance with the demand thus giving rise to this suit.

The defendant did not enter appearance or file a defence and so the plaintiffs' evidence is not controverted. It is clear from the plaintiffs' evidence that they are the registered proprietors of the suit land. The registration is under the **new Land Registration Act 2012** and the certificate of official search shows that on 19th November 2015, a restriction was registered on the suit land by one Muthoni perhaps the defendant herein. However, in the absence of her evidence, this Court is not in a position to know on what basis the said restriction was placed on the suit land. What is clear however is that under **Section 24 of the Land Registration 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. In the absence of any evidence suggesting that the plaintiffs may have acquired the suit land through fraud, misrepresentation or corrupt means, this Court can only conclude that the plaintiffs are the absolute and indefeasible owners of the suit land and are therefore entitled to evict the defendant and all other persons that may trespass onto the suit land. As there is no evidence placed before me to suggest that the defendant has any good reasons to remain on the suit land, this Court is obliged to grant the orders sought for her eviction therefrom. The plaintiffs are therefore entitled to prayer (a) of their plaint.

With regard to the claim for general damages for trespass, it would seem from the notice issued to the defendant and dated 18th December 2015 (Exhibit 3) that this trespass is quite recent. The plaintiffs have not indicated when they acquired the land but on the material before me, it can only be in the recent past. The certificate of title to the suit land was not availed to guide the Court. There is a trespass nonetheless and in my view, a nominal sum of Ksh. 5,000 will meet the ends of justice.

Ultimately therefore, there shall be judgment for the plaintiffs against the defendant in the following terms:-

1. An order for the eviction of the defendant, her servants, employees or anybody claiming under her from land parcel No. L.R MUTIRA/KAGUYU/4433. That eviction shall comply with the new provisions of Section 152 E of the Land Act 2012.

2. General damages of Ksh. 5,000.

3. The plaintiffs shall meet their own costs of this suit.

It is so ordered.

B.N. OLAO

JUDGE

30TH SEPTEMBER, 2016

Judgment dated, signed and delivered in open Court this 30th day of September 2016.

1st Plaintiff present in person

2nd Plaintiff absent

No appearance for the Defendant

B.N. OLAO

JUDGE

30TH SEPTEMBER, 2016