



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 443 OF 2013

DAVID MUTALI INGUNYI.....PLAINTIFF

VERSUS

FREDRICK M OBAREDEFENDANT

JUDGMENT

(Suit for eviction; plaintiff being owner of suit property; defendant not filing any defence; plaintiff's suit uncontested; judgment entered for the plaintiff)

This suit was commenced by way of plaint filed on 26 June 2013. Despite being served with summons, the defendant has not entered appearance nor filed any defence. Neither did he appear during the hearing of this matter although he was served with a hearing notice.

The case of the plaintiff is that he is the lawful owner of the land parcel Nakuru/Molo Kapsita/372. He became registered as proprietor on 9 July 2001. Despite being proprietor, the defendant has encroached into his land and has refused to vacate despite being asked to do so. In his pleadings, the plaintiff has asked for an eviction order and costs of the suit.

The plaintiff testified that he purchased the land and eventually became registered as proprietor. He farmed the land for a while. In the year 2006, he was in Molo town and saw a homeless old lady putting up a polythene house. Apparently out of sympathy, he offered to allow her use of his land. The old lady utilized the land until the post election violence of 2008. When the plaintiff went to visit the land, he found the old lady had left and discovered the defendant on the land. The defendant had gone ahead to put up structures of his own. He asked the defendant to leave but the defendant stated that he had bought the land. In his evidence, the plaintiff stated that the defendant replied to his demand letter stating that he had purchased the land parcel Nakuru/ Molo Kapsita/354 from one Isaac Omboto. The plaintiff produced the map of the area and stated that the plot No. 354 is at least three plots from the suit land (although I have seen from the map that the two plots abut each other). It was his view that the defendant should be evicted.

I have considered the pleadings and the evidence. The evidence of the plaintiff is uncontroverted. He produced the title deed to the suit land which shows that he is the lawful proprietor of it. As proprietor, he is vested with all rights of proprietorship, including the right to exclusive possession. These are set out in the Land Registration Act at Section 25 which provides as follows:-

S. 25. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act,

and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

The defendant has not filed anything to assert any right over the suit land. I have no reason not to enter judgment for the plaintiff. I now make the following orders:-

(a) As against the defendant, the plaintiff is hereby declared the lawful proprietor of the land parcel Nakuru/ Molo Kapsita/372.

(b) I order the defendant to vacate the suit land within 14 days of service of this judgment and/or decree and if he fails to do so, an eviction order do issue, and eviction be done at the expense of the defendant.

(c) A permanent injunction is issued barring the defendant from the land parcel Nakuru/ Molo Kapsita/ 372.

(d) The defendant shall shoulder the costs of this suit.

It is so ordered.

Dated signed and delivered in open court at Nakuru this 10th day of February 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU

In presence of:

Mrs Lilian Muthoni holding brief for Mr Karanja

Mbugua for the plaintiff

Defendant: Absent

Emmanuel Maelo: court Assistant