

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT AND LAND COURT

ELC NO. 1065 OF 2013

WILLIAM KIARIE KARIUKI.....PLAINTIFF

-VERSUS-

NJOROGE KIMANI..... DEFENDANT

JUDGMENT

1. This is a straight forward claim by a registered proprietor of land against an illegal occupant, a trespasser for a restraining order.
2. The Plaintiff is the registered proprietor of all that property known as title No. Kiambaa/Kiambaa/T.61. That fact is borne both by the registration records as well as the Title deed registered on 15th August, 1988. The title deed was issued to the Plaintiff on 15th August, 1988 following an exchange with the defunct Kiambu County Council who were then proprietors of the same. The Plaintiff in exchange, had surrendered title No. Kiambaa/Kiambaa/T.185. The Defendant seems to have occupied the property sometime in or about 2002 prompting the Plaintiff to lodge a complaint with the then Land Disputes Tribunal. The Tribunal ruled in favour of the Plaintiff with orders directed at the Defendant to vacate. In May, 2003 the Defendant sought to appeal to the provincial Land Tribunal. The appeal does not appear to have been filed. After various fruitless attempts to have the Defendant vacate the premises the Plaintiff filed this suit. The Defendant did not file any defence to the suit and on the 16th December, 2014 the Plaintiff proceeded with his claim *ex parte*.
3. In his examination in chief besides adopting his witness statement filed on 5th September, 2013, the Plaintiff stated on oath that he is the registered proprietor of the suit property. In support of his claim the Plaintiff produced an extract of the register (PExh-1) for the suit property Kiambaa/Kiambaa/T.61. The Plaintiff also tendered in evidence the title deed (P-Exh-2). Both showed the fact that the Plaintiff is the registered proprietor of the suit property. Based on such evidence, the Plaintiff laid claim to the suit property and asked that the Defendant be evicted from the suit property and be further restrained from trespassing unto the same.
4. The law is clear in such circumstances. Sections 25 and 26 of the Land Registration Act, 2012 is to the effect that a Certificate of Title or lease is prima facie evidence of ownership and must be protected as must he holder thereof, unless such title or lease has been impeached. The Sections further implore all to ensure that the holder of title enjoys all benefits appurtenant to such ownership. One of the benefits is the right to access and to have unlimited user of one's property.
5. The Plaintiff has proved that he is the owner, duly registered, of the suit premises. He is entitled to the protection of both the law and the court. The defendant has no interest in the property. He has occupied the property but cannot claim ownership by way of adverse possession as the same was interrupted by the Plaintiff through the proceedings before the Land Disputes Tribunal. I am satisfied that the Plaintiff has proved this claim to the required standards. I am satisfied and convinced that the Plaintiff is deserving of the prayers in the plaint. I will consequently allow the

suit and enter judgment as prayed for in the plaint. The Plaintiff will also have the costs of this suit.

Dated, signed and delivered at Nairobi this10TH ...day of ..March.., 2015.

J. L. ONGUTO

JUDGE

In the presence of:-

.....for the Plaintiff/Applicant

.....for the Defendants/Respondent