



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KERICHO

E.L.C CASE NO. 77 OF 2010

CHARLES K. MAIYO & ANOTHER-----PLAINTIFFS

VERSUS

JOHN MBURU-----DEFENDANT

J U D G M E N T

(Claim for vacant possession; plaintiffs having purchased suit property; defendant having been a tenant of previous owner but refusing to vacate; judgment entered in favour of the plaintiff for vacant possession, mesne profits and costs)

This suit was commenced by way of plaint filed on 9 November 2010. In brief, the plaintiffs pleaded that they are the owners of the land parcel Kericho Municipality Block 5/399 having purchased it from the previous owners, and becoming registered as proprietors on 7 May 2010. At the time of purchase, the defendant was a tenant of the previous owner and was running a garage. It is pleaded that the defendant has been notified of the change of ownership but continues to occupy the premises in disregard to the plaintiffs' proprietary interests. The plaintiffs have sued for vacant possession, and in default, orders of eviction, mesne profits, interest and costs.

The defendant entered appearance and filed defence and counterclaim. He denied that the plaintiffs were the registered proprietors of the suit property. He pleaded that he is a protected tenant of the known owner of the premises, one Kipkoech arap Langat (Deceased), since early 1970. He further pleaded that if at all the plaintiffs are the registered proprietors, they procured registration by way of fraud. The particulars of fraud are inter alia that they purchased the property before the grant of letters of administration was confirmed. It is also pleaded that the defendant has unconditionally paid rent to the known landlord through the Business Premises Rent Tribunal at Nakuru. It is also pleaded that the plaintiffs issued an illegal notice to terminate, or alter the terms of tenancy, and that their case filed at the Business Premises Rent Tribunal was dismissed on 8 July 2010. It is pleaded that there is a pending matter in the Magistrate's court being Kericho Civil Suit No. 243 of 2000 over the same matter. In his counterclaim the defendant repeated that the plaintiffs' title was obtained through fraud and sought a declaration to that effect.

The plaintiff called a total of five witnesses whereas the defendant called none.

The totality of the evidence of the plaintiffs, through PW-1, the 1st plaintiff, is that they did buy the suit premises from the administrators of the estate of Kipkoech arap Langat. Two agreements of sale dated 14 February 2009 and 15 September 2009 were drawn. The land was then transferred to them on 7 May 2010 by the persons who were confirmed as beneficiaries of the suit property. Prior to them being registered as

proprietors, they took over the premises and informed the defendant that they are the new proprietors of the land. The defendant then filed a reference at the Business Premises Rent Tribunal at Nakuru being case No. 13 of 2009. That case was decided on 8 July 2010, the gist of the decision being that the notice issued by the plaintiffs herein, asking the defendant to vacate the premises, could not be valid, as the plaintiffs were not yet registered owners of the suit premises. After this decision, the plaintiffs issued a demand letter dated 28 October 2010 asking the defendant to vacate the premises but which was ignored. By this time the plaintiffs had procured registration of the suit property into their names. The defendant is still in the premises and uses the same as a garage. PW-1 testified that they want to develop the land.

The administrators of the estate of Kipkoech arap Langat, and a family member testified as PW-2, 3 and 5. Their evidence is that they sold the suit property to the plaintiffs and no longer have any interest in it. PW-5 was the Land Registrar Kericho, who testified that the plaintiffs are indeed the registered proprietors of the suit property.

As I mentioned earlier, the defendant called forth no evidence.

The evidence of the plaintiffs is therefore uncontroverted. I have seen from the Certificate of Lease, and the land register, produced as exhibits, that the plaintiffs are indeed the registered proprietors of the suit property. The property is not developed and is used as a garage by the defendant. The plaintiffs want to make use of the property by developing it. Although the defendant in his defence made the allegation that the plaintiffs procured registration as owners by fraud, I have not seen any evidence of fraud. They purchased the property and the same was properly transferred to them. In any event, the sellers are not complaining of any fraud, and I wonder what locus the defendant has to protest the registration of the plaintiffs as proprietors. He himself has no registered interest over the suit property. He has not demonstrated to this court that he holds any lease that must be protected, and which constitutes an overriding interest to the plaintiffs' proprietary rights, or any other interest for that matter. Neither has he proved to me the existence of any previous case as pleaded. To me it appears as if the defendant is simply being stubborn and does not wish to move from the premises. However, the plaintiffs as owners, have a right to derive benefit from their investment and I am unable to allow the defendant to stand in their way.

I allow the plaintiffs' suit and enter judgment in their favour. I find no substance in the defendant's defence and counterclaim and it is hereby dismissed.

I order the defendant to immediately give vacant possession to the plaintiffs and in any event no later than 14 days after service of this judgment or decree upon him. If he does not vacate, the plaintiff is at liberty to apply for an eviction order. There is a claim for mesne profits made by the plaintiffs. Mr. Miruka for the plaintiffs submitted for the sum of Kshs. 35,000/= payable from the date of filing suit. Evidence was led that the defendant used to pay the sum of Kshs. 35,000/= per month for use of the premises. He has not been paying this sum to the plaintiffs. In his pleadings, the defendant had pleaded that this sum is deposited at the Business Premises Rent Tribunal. However, no evidence was led to prove this. I can only assume that there is no such deposit made. I therefore allow the plaintiffs' claim for mesne profits in the sum of Kshs. 35,000/= per month from the date of filing suit till payment in full. Interest on the same shall also accrue from the date of filing suit till payment in full. The plaintiffs shall also have costs of this suit and of the counterclaim.

It is so ordered.

DATED, DELIVERED & SIGNED AT KERICHO THIS 26TH DAY OF JUNE 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT.

In the presence of:

Mr. Enock Miruka for the plaintiffs.

No Appearance for M/s Motanya and Company Advocates for defendant.

Court Assistant - F. Juma.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT