



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 234 OF 2013

DR. WAWERU MATHU J. M.....PLAINTIFF

VERSUS

DANSON OTACHI CHIONJA.....^{1ST} DEFENDANT

ONGERE OTACHI.....^{2ND} DEFENDANT

JUDGMENT

(Suit against defendants for eviction; plaintiff being owner of suit property; no defence filed, judgment entered for plaintiff).

1. This suit was commenced by way of plaint filed on 21 October 2011. The defendant did not enter appearance nor file defence and the matter proceeded ex-parte.

2. The plaintiff is the registered and absolute proprietor of the land parcel Nyandarua/Ndemi/706 which was allocated to him in the year 1982 and title deed issued in the year 1993. The 1st defendant is said to be the father of the 2nd defendant. It is said that the 1st defendant was allocated the land parcel Nyandarua/Ndemi/458, which he later sold and left himself landless. Upon disposing his land, the defendants started encroaching into the plaintiff's land since the year 2005 and erected a structure. They also started doing subsistence farming on it. In May 2011, the 1st defendant wanted to bury his deceased wife on the land but the provincial administration intervened and she was buried at a cemetery. In this suit, the plaintiff wants orders of vacant possession or eviction; permanent injunction against the defendant and costs.

3. I have considered the pleadings and the evidence of the plaintiff all of which are uncontroverted. The plaintiff is undoubtedly the registered owner of the suit property. The defendants have not tabled any material to demonstrate any right over the suit property. As owner, the plaintiff is entitled to all rights over the property including the right of exclusive possession. This is brought out by the provisions of Section 25 of the Land Registration Act, Act No. 3 of 2012, which provides as follows :-

Rights of a proprietor.

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.

4. I see no reason why the plaintiff's case should not succeed with costs. I hereby enter judgment for the plaintiff and make the following orders.

(i) The defendants are hereby ordered to vacate the land parcel Nyandarua/Ndemi/706 within 14 days of service of this judgment and/or decree and in default, an order of eviction do issue and the defendants be evicted at their own cost.

(ii) An order of permanent injunction is hereby issued restraining the defendants and/or their servants, agents and/or assigns, from entering, being upon, utilizing, or in any other way interfering with the plaintiff's quiet possession of the land parcel Nyandarua/Ndemi/706.

(iii) Costs of the suit to the plaintiff.

5. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 21ST day of October 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Ms. Kipruto holding brief for Ms. Mureithi for M/s Ndegwa Wahome & Co Advocates for plaintiff

No appearance for defendants

CA : Janet