



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. CASE NO. 680 OF 2013

EDWARD KAGUURA MBUGUA..... PLAINTIFF/APPLICANT

VERSUS

JOHN NJENGA THUITA.....1ST DEFENDANT/RESPONDENT

HANNAH WAMBUI THUITA.....2ND DEFENDANT/RESPONDENT

FRANCIS KURA KIMANI.....3RD DEFENDANT/RESPONDENT

MARGARET NYAMBURA.....4TH DEFENDANT/RESPONDENT

JUDGMENT

This suit was filed by way of Complaint filed on 10th June 2013 by which the Plaintiff sought for judgment to be entered against the Defendants compelling them to give the Plaintiff vacant possession of the parcel of land known as Limuru/Rironi/T.415 (hereinafter referred to as the “suit land”), for costs of this suit and for any other relief that this court may deem just to grant.

After entering appearance on 26th July 2013, the Defendants failed to file a Defence which prompted the Plaintiff to request for interlocutory judgment to be entered against them. This was done on 21st August 2013 and the matter proceeded for formal proof on 10th June 2014.

At the hearing of this suit on 10th June 2014, the Plaintiff testified that he is registered proprietor of the suit land having bought it from one Kenneth Kimani Kagonyi way back in the year 1984. In support of that assertion, he produced his original title deed and a current Certificate of Official Search, all of which bore his names. He further testified that the Defendants entered into the suit land and live there and have refused to vacate the same. He further stated that the Defendants are hostile towards him forcing him to get accompaniment from Tigoni Police Station. He confirmed that he had been to the Chief and DO of the area who advised him to come to the High Court to obtain an eviction order.

The issue that emerges for my determination is whether the Plaintiff has proved that he is the registered proprietor of the suit land and whether he is entitled to the order of eviction he seeks. The Plaintiff produced to this court his original title deed for the suit land and Certificate of Official Search, both of which bear his names. **Section 26(1) of the Land Registration Act** provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner , ... and the title of that proprietor shall not be subject to challenge, except-

- a. ***On the ground of fraud or misrepresentation to which the person is proved to be a party; or***
- b. ***Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”***

Going by this legal provision, it is quite clear that having produced his certificate of title to this court whose validity has not been challenged under any of the grounds set out, this court is duty bound to find that the Plaintiff is the absolute and indefeasible owner of the suit land and I do so find.

The rights of a registered proprietor of land are set out in **Sections 24 and 25 of the Land Registration Act** as follows :-

“24. Subject to this Act—

(a) 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; and

(b) -

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—

- 1. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and***
- 2. 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.”***

One of the main privileges belonging to land is the right to vacant possession of the land to the exclusion of all others. The Plaintiff is clearly entitled to this right and the continued occupation of the suit land by the Defendants clearly contravenes that very fundamental right and privilege. I therefore have no difficulty in finding that indeed the Plaintiffs rights of exclusive possession of the suit land have been contravened by the Defendants unlawfully. I therefore enter judgment in favour of the Plaintiff as prayed by the Plaintiff and order that the Defendants pay the Plaintiff the costs of this suit.

DELIVERED AND SIGNED IN NAIROBI THIS 24TH

DAY OF OCTOBER 2014.

MARY M. GITUMBI

JUDGE