



Terrazzo Enterprises Limited v Sanja Omuzee t/a Sanja Farm Machinery Tractors (Environment & Land Case E073 of 2021) [2024] KEELC 1447 (KLR) (18 March 2024) (Judgment)

Neutral citation: [2024] KEELC 1447 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E073 OF 2021
CA OCHIENG, J
MARCH 18, 2024**

BETWEEN

TERRAZZO ENTERPRISES LIMITED PLAINTIFF

AND

SANJA OMUZEE T/A SANJA FARM MACHINERY TRACTORS . DEFENDANT

JUDGMENT

1. Through a Plaint dated the 22nd July, 2021, the Plaintiff seeks for Judgment against the Defendant in the following terms:-
 - a. A declaration that the Defendant is illegally and unlawfully occupying Plaintiff's Plot LR No. 337/850 Mavoko in Machakos County.
 - b. A permanent injunction to stop the Defendant from entering, trespassing into and operating and or conducting business in the Plaintiff's Plot LR No. 337/850 Mavoko in Machakos County.
 - c. An order to compel the Defendant to demolish the structure illegally and unlawfully erected on the Plaintiff's Plot LR No. 337/850 Mavoko in Machakos County.
 - d. An order for mesne profits from the time of the illegal and unlawful occupation by the Defendant into the Plaintiff's Plot LR No. 337/850 Mavoko in Machakos County.
 - e. Costs of the suit and interest in (d) above.
2. The Defendant though duly served failed to enter appearance and file a Defence. The matter proceeded for hearing where the Plaintiff called one witness.



Evidence of the Plaintiff

3. PW1 Gopal Dhanji Patel testified that the Plaintiff is the proprietor of Plot No. 337/850 at Mavoko, hereinafter referred to as the 'suit land'. He confirmed that the Plaintiff had been paying requisite rates and rent for the suit land. It was his testimony that sometime in 2019, the Defendant encroached on the suit land, put up iron structures thereon and conducts business by storing machines therein. Further, that efforts to evict him have proved futile as he claims that he is a licensee and his occupation is lawful. It was his testimony that the Plaintiff is a stranger to the Defendant. Further, that the Plaintiff intended to develop the suit land but is unable to do so, due the Defendant's illegal occupation of the said suit land. He insisted that the Defendant was a squatter and a trespasser on the suit land. The Plaintiff produced the following documents as exhibits: Grant Number IR 71895 for LR No. 337/850; Rent Clearance Certificate; Approved Development Plans; Demand Letter to Defendant and Rate Receipt.

Submissions

4. The Plaintiff in its submissions contended that it had established that it is the registered proprietor of the suit land as he had produced documents of title to that effect. It further submitted that it has demonstrated that the Defendant had illegally encroached on the suit land and denied it from taking possession. It argued that since the Defendant was a trespasser he should be evicted from the suit land and his structures demolished. The Plaintiff further claimed it is entitled to mesne profits and costs of the suit. To buttress its averments, it relied on the following decision: *Rene Dalgaard Jorgensen v. Esther Akoth Kokeyo* (2021) eKLR.

Analysis and Determination

5. Upon consideration of the Plaint, Testimony of the witnesses, Exhibits and Submissions, the following are the issues for determination:
 - a. Who is the registered owner of the suit land.
 - b. Whether the Defendant has trespassed on the suit land.
 - c. Whether the Plaintiff is entitled to orders as sought in the Plaint.
6. The Plaintiff claims it is the owner of the suit land. PW1 in his testimony confirmed that the Plaintiff was the registered proprietor of the suit land and produced an original Grant Number 71895 over LR No. 337/850; Rent payment receipts; Approved Development Plans and Rate Clearance Certificate.
7. On proof of ownership of suit land, Section 26 of the *Land Registration Act* provides as follows:
 - (1) The Certificate of Title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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.”

While Section 24(a) of the [Land Registration Act](#) stipulates that:-

“Subject this Act, the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

8. In the case of [Ahmed Ibrahim Suleiman and Another v Noor Khamisi Surur](#) [2013] eKLR Justice J.M. Mutungi stated that:-

“The Plaintiff having been registered as proprietor and having been issued with a certificate of lease over title No/Nairobi/Block 61/69 are in terms of Section 26(1) of the Land Registration Act entitled to the protection of the law.”

9. While in the case of [Ali Wanje Ziro v Abdulbasit Abeid Said & another](#) [2022] eKLR the Judge held that:-

“The law is clear that, the Certificate of Title issued by the Registrar upon registration 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 – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

10. From a reading of Sections 24 and 26 of the [Land Registration Act](#), it is clear that a Certificate of Title is prima facie evidence that the person named on that title is the absolute and indefeasible owner of the property. In this instance, since the Defendant never filed a Defence to challenge the Plaintiff’s title, while relying on the title documents that the Plaintiff produced as exhibits, I find that it is indeed the absolute and indefeasible owner of the suit land. It was PW1’s testimony that the Defendant had encroached on the suit land, put up a structure thereon and is undertaking business. Further, that efforts to remove him have proved futile. Having established that the Plaintiff is the registered proprietor of the suit land, I find that it is entitled to quiet and peaceful possession to it. In the case of [Rene Dalgaard Jorgensen v Esther Akoth Kokeyo](#) [2021] eKLR, it was held that:-

“Given the fact that the Plaintiff is in possession of a Certificate of Title for the suit property, he is entitled to quiet and peaceful possession thereof...”

11. Based on the facts before me while associating myself with the decisions cited, I find that the Defendant’s actions of entering into the suit land has infringed on the Plaintiff’s right to quiet and peaceful possession over the said land. Further, that the said actions amount to illegal encroachment onto the Plaintiff’s property. In the circumstance, I hence find that the Defendant should demolish his illegal structures on the suit land and grant the Plaintiff vacant possession. In line with the principles established in the case of [Nguruman Limited v Jan Bonde Nielsen](#) [2014] eKLR, I hold that the Plaintiff has met the required standard for the issuance of a permanent injunction restraining the Defendant from entering, trespassing into and operating and or conducting business on the suit land and will proceed to grant the same.



12. On the claim for mesne profits, I wish to refer to Section 2 of the Civil Procedure Act Cap 21 which defines it as follows: -

“mesne profits”, in relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession.”

13. Based on the evidence tendered by the Plaintiff, I find that it did not provide any proof on assessment of the basis for the demand of mesne profits and I will not award it the same.

Who should bear the costs of the suit.

14. Since the Plaintiff has been inconvenienced with the Defendant’s defiance to move from the suit land, I find that it is entitled to costs.

15. It is against the foregoing that I find that the Plaintiff has proved its case on a balance of probability and will proceed to enter Judgment in its favour and make the following orders:

- a. A declaration be and is hereby issued that the Defendant is illegally and unlawfully occupying Plaintiff’s Plot LR. No. 337/850 Mavoko in Machakos County.
- b. A permanent injunction be and is hereby issued restraining the Defendant from entering, trespassing into and operating and or conducting business in the Plaintiff’s Plot LR. No. 337/850 Mavoko in Machakos County;
- c. An order be and is hereby issued compelling the Defendant to demolish the structure illegally and unlawfully erected on the Plaintiff’s Plot LR. No. 337/850 Mavoko in Machakos County.
- d. Costs of the suit awarded to the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 18TH DAY OF MARCH, 2024

CHRISTINE OCHIENG

JUDGE

In the presence of;

Parties absent

Court Assistant – Simon/Ashley

