



REPUBLIC OF KENYA



KENYA LAW
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**Durahard v Mbarak & 3 others (Environment & Land Case
E043 of 2023) [2024] KEELC 4635 (KLR) (12 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4635 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E043 OF 2023**

NA MATHEKA, J

JUNE 12, 2024

BETWEEN

DURAHARD PLAINTIFF

AND

SALIM MBARAK 1ST DEFENDANT

ABDALLA MAGRAM 2ND DEFENDANT

MOHAMED FAHIYE 3RD DEFENDANT

SALIM MBARAK 4TH DEFENDANT

JUDGMENT

1. The claim is that, the plaintiff is the absolute and registered owner of the parcel of land known as Plot No. 1241/I/MN hereinafter called the suit property. That the plaintiff's title to the aforesaid parcel of land has never been challenged or been in dispute at any time. That when the plaintiff bought suit property a few of the defendants were tenants in a portion of the land having houses without land. The since the plaintiff bought the land in 1997 the defendants have never paid any money to him as such they are not their tenants.
2. That the defendants have erected additional structures without the plaintiff's knowledge and consent. Allowed and or opened and access road through the plot without the plaintiff's knowledge and consent. Invited third parties to build structures, stores and drug peddlers den on the plot without the plaintiff's knowledge and consent.
3. That sometimes in 2010 the plaintiff applied for approval for construction of a perimeter wall from NEMA and after being satisfied issued the plaintiff with the license for construction of a perimeter wall. That the plaintiff's efforts to put a perimeter wall on the suit property has been frustrated by the defendants. That the defendants trespass and/or occupation of the suit property has interfered with the



plaintiff's quiet enjoyment of the property. That the plaintiff is seriously aggrieved and inconvenienced by the illegal actions of the defendants since their rights of quiet enjoyment in respect of the suit property have been manifestly interfered with. The plaintiff prays for judgment against the defendants for;

- a. A declaration that the plaintiff is the registered and absolute owner of the suit property known as plot No. 1241/I/MN.
 - b. A permanent injunction to issue against the defendants/respondents either by themselves, their employees, servants and/or agents, from preventing the plaintiff from constructing a perimeter wall on the suit property.
 - c. The plaintiff be granted vacant possession of the suit property by the eviction of the defendants from the suit property known as Plot No. 1241/I/MN.
 - d. Any other relief and/or remedy the court will find just, fit and expedient to grant in the circumstances of this case.
 - e. Costs of this suit.
4. This court has considered the evidence and submissions therein. The Defendants were served but failed to attend court and the suit was undefended. The [Land Registration Act](#) is very clear on issues of ownership of land and Section 24(a) of the [Land Registration Act](#) provides as follows:

“Subject to this Act, 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.”

Section 26 (1) of the [Land Registration Act](#) states as follows:

“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 –

- 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.”
5. 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.
6. This court in considering this matter referred to the case of *Elijah Makeri Nyangw'ra vs Stephen Mungai Njuguna & Another* (2013) eKLR where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally



or through a corrupt scheme. The Judge in the case while considering the application of section 26(1) (a) and (b) of the *Land Registration Act* rendered himself as follows;

“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

7. PW1, the plaintiff testified that they are is the absolute and registered owner of the parcel of land known as Plot No. 1241/I/MN (PEx2). That when the plaintiff bought suit property a few of the defendants were tenants in a portion of the land having houses without land. The since the plaintiff bought the land in 1997 the defendants have never paid any money to him as such they are not their tenants. That the defendants have erected additional structures without the plaintiff's knowledge and consent. Allowed and or opened and access road through the plot without the plaintiff's knowledge and consent. That their efforts to put a perimeter wall on the suit property has been frustrated by the defendants. That the defendants' trespass and/or occupation of the suit property has interfered with the plaintiff's quite enjoyment of the property. I find that the plaintiff is the absolute owner of the suit property and is protected by sections 24 and 26 of the *Land Registration Act*. I find that his evidence has not been rebutted. I find that the plaintiff has proved his case on a balance of probabilities and I grant the following orders;

1. A declaration that the plaintiff is the registered and absolute owner of the suit property known as plot No. 1241/I/MN.
2. A permanent injunction to issue against the defendants/respondents either by themselves, their employees, servants and/or agents, from preventing the plaintiff from constructing a perimeter wall on the suit property.
3. The defendants are to vacate the suit property known as Plot No. 1241/I/MN within 90 days after service of this order and in default eviction order to issue.
4. No order as to costs as the suit was undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 12TH DAY OF JUNE 2024.

N.A. MATHEKA

JUDGE

