



REPUBLIC OF KENYA



KENYA LAW
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**Shelly Engineering Works Ltd v Maruru & 3 others (Environment & Land
Case 335 of 2015) [2023] KEELC 266 (KLR) (25 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 266 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 335 OF 2015**

**NA MATHEKA, J
JANUARY 25, 2023**

BETWEEN

SHELLY ENGINEERING WORKS LTD PLAINTIFF

AND

HAMISI MARURU 1ST DEFENDANT

WILFRED KHALUMBA ABDUL WILSON WANJE 2ND DEFENDANT

ANNA ALI 3RD DEFENDANT

ALI MZEE & OTHERS 4TH DEFENDANT

JUDGMENT

1. The Plaintiff avers that on or about October and November, 2015 at Likoni the Defendants encroached, entered/ invaded and or trespassed into the Plaintiff's property land known as MS/ Block 111/206, and have started constructing structures thereon and have without any colour of right even started apportioning and or subdividing the subject land and selling the same to unsuspecting third parties without the knowledge and or consent of the Plaintiff and without colour of right. The Plaintiff has made a complainant to the area Chief, and the District Officer Likoni for action against the Defendants buy in vain and this being a private property the Plaintiff is likely to suffer irreparable loss and damage which cannot be compensated in monetary terms. The Plaintiff prays for the following orders;
 - a. That, a permanent injunction do issue restraining the Defendants, their Servants and or Agents from trespassing into the Plaintiff's suit Land.
 - b. That, an order of eviction and demolition of all illegal structures erected on the suit premises.
 - c. Costs and interests of the suit.



- d. Any other relief the court deems fit to grant.
2. The Defendants aver and state that their properties are not within Plot No MS/Mainland South/Block III/206 but are within plot No III/ 118 which is a Government land. The 1st Defendant submitted that they have been in occupation of plot No MS/Mainland South/Block/ III/118. That Plot No 117 and 118 were declared as a settlement scheme by the Government of Kenya vide a letter dated December 4, 2006. Pursuant to that letter the Defendants are waiting for subdivision and issuance of tile deeds by the Government and are strangers to plot No MS/Mainland South/Block III/206. They are not trespassers having been in occupation since 1989 and are entitled to the same through adverse possession.
3. This court has considered the evidence and the submissions therein. The first issue that this court will deal with is to determine who between the Plaintiff and Defendants are the owners of the suit property. The law clearly states that a certificate of title is the conclusive evidence of proprietorship. Section 26 of the [Land Registration Act](#) states that:-

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...”

4. PW1 the Director of the suit property MS/ Block 111/206 testified that they were issued with the title of the suit land in 1997 and the same was vacant. He visited the land in 2015 and found it now had squatters and hence filed this case. PW1 produced the title and official search as exhibits to support their case. PW2 who was the District Surveyor at the material time testified that Plot No MS/ Block 111/206 was excised from No 111/118 which was government land and there was no objection. This excision was done on October 21, 1992 and several excisions have been done and the remaining portion is now plot No MS/Block/111/203. She stated that plot No MS/Block/111/203 and MS/ Block 111/206 are two separate plots on the land.
5. The issue then for determination is whether or not the Defendants have trespassed on the Plaintiffs land. [Clerk & Lindsell on Torts](#) 18th Edition at paragraph 18-01 defines trespass as follows;

Any unjustifiable intrusion by one person upon land in possession of another.” ...Trespass is actionable at the instance of the person in possession and that proof of ownership is *prima facie* proof of possession”

6. In [Black's Law Dictionary](#) 8th Edition, a continuing trespass is defined as;

A trespass in the nature of a permanent invasion on another's rights, such as a sign that overhangs another's property”.

7. DW1, the 1st Defendant testified that they have been in occupation of plot No MS/Mainland South/Block/ III/118. That Plot No 117 and 118 were declared as a settlement scheme by the Government of Kenya vide a letter dated December 4, 2006. Pursuant to that letter the Defendants are waiting for subdivision and issuance of tile deeds by the Government and are strangers to plot No MS/Mainland South/Block III/206. DW1 stated that he has lived there since 1989 and that they are awaiting title deeds. I find that it is possible that the so called squatters might have been on the land long before the Plaintiff obtained title in 1997. Indeed, PW1 stated that he did not visit the suit land from 1997 when they got title and only went back in 2015 to find squatters had invaded the place. This is



a period of 18 years. From the aerial map produced by PW2 it appears that the suit land is fully occupied. A letter adduced by the Defendants dated December 4, 2006 confirms that the area had been declared a settlement scheme and the provincial administration was awaiting the resettlement. This letter was written by the District Officer Likoni to the District Chairman of the Land Adjudication and Settlement, Mombasa District. For those reasons, I find that the Plaintiff has failed to prove his case on a balance of probabilities and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF JANUARY 2023.

N.A. MATHEKA

JUDGE

