



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 26 OF 2013

JOHN MURIUNGI MUGWIKA.....PLAINTIFF

VERSUS

CHARITY MPINDA M'MUGWIKA.....DEFENDANT

J U D G M E N T

BACKGROUND:

1. The parties herein are siblings. The Land in dispute is parcels No Abothuguchi/Ruiga/336 which originally belonged to their father but is now apparently registered in the name of the Plaintiff.

PLAINTIFF'S CASE

2. Plaintiff's case is that he acquired parcel No 336 through transmission in Succession Cause No. 225 of 2011.

In support of his claim, Plaintiff has produced the following documents as exhibits.

- 1) Copy of the green card for Land Parcel LR. ABOTHUGUCHI/RUIGA/336.
- 2) Copy of green card for land Parcel No ABOTHUGUCHI/GAITU/2188
- 3) Copy of the demand notice dated 12/11/2012
- 4) Copy of the judgment in Meru High Court Succession Cause No. 225 of 2011.

3. Plaintiff's brother one David Kinyua Mugwika and his sister Rose Karimi testified in support of Plaintiff's case. They both state that plaintiff got the land parcel No. 336 through the Succession Cause. They also aver that Defendant already has land parcel No. Abothuguchi/Gaitu 2188 which she got from their father during his life time.

4. Plaintiff avers that despite the Judgment in the Succession cause, Defendant has refused to move from parcel No. 336.

5. Plaintiff therefore prays for an order of eviction of the Defendant, her children and anyone else working at her behest from land parcel 336.

DEFENCE CASE

6. Defendant claims that she has lived on parcel No. Abothuguchi/Ruiga/336 for over 50 years. She has apparently developed the land. She also avers that Plaintiff was only given a portion of that land whereas she was to take the other portion.

7. Her prayer is for this case to be put on hold until the Succession Cause is fully disposed off.

8. The documents produced by Defendant in support of her case are:-

1) Application for review of judgment entered in Succession Cause No. 225 of 2011.

2) Letter of the District Commissioner Meru Central District Ref. No LND 15/15 VO XXXVII/20th December, 2001.

3) Photographs depicting the Defendant's home and other developments.

9. During the testimony, Defendant also produced the original title of the Parcel 336 averring that she had been given this title by her father to keep.

SUBMISSIONS.

10. It has been submitted for the plaintiff that there are no orders barring the implementation of the grant in the succession cause no.225 of 2011 in Meru.

11. It is further submitted by for the plaintiff that under section 24 of the Land Registration Act, "the registration of a person as a proprietor of the land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto".

12. Plaintiff avers that the defence herein is an abuse of the High court succession case no. 225 of 2011.

13. Defendant on the other hand has submitted that the registration of land to the Plaintiff was done illegally and secretly and this was meant to deprive her of her property.

14. It is also submitted for Defendant that the Succession Cause is under review.

15. Defendant further submits that Plaintiff's title is questionable as the same was acquired 20 days from the time Judgment in Succession Cause was delivered.

16. Defendant has cited the case of Munye Maina Vs. Hiram Gathiho Maina Civil Appeal No. 2009 where it was held that:-

"we have stated that when a registered proprietor root of title is challenged it is not sufficient to dangle the instrument of title as proof of ownership, it is this instrument of title that is challenged and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register".

DETERMINATION.

17. I have weighed all the issues, the evidence and submissions of the parties.

18. It is not disputed that Defendant is the registered proprietor of parcel No. 2188. It is also not disputed that Plaintiff is the current registered owner of parcel No. 336.

19. The issues for determination are:-

1) Whether Plaintiff's title to parcel No. 336 is subject to challenge.

2) Whether Defendant should be evicted from the Land No. 336.

20. Whether Plaintiff's Title to the land Parcel No. 336 is subject to challenge.

The Green Card availed by the Plaintiff indicates that he became the registered owner of the land 336 on 01.11.12.

21. Pursuant to provisions of Section 26 of Land Registration Act;

(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, un-procedurally or through a corrupt scheme".

22. The Defendant avers that the title was unlawfully acquired. However she has not disputed that there was a Succession Cause No. 225 of 2011. The Judgment there of was delivered on 11.10.12 where the Land Parcel No. 336 was given to the Plaintiff herein.

23. I am therefore inclined to find that Plaintiff acquired the title to this Land lawfully via transmission in the succession cause.

24. Five years have now gone by since the date of the Judgment, yet there is no evidence of an appeal or a stay order in respect of the succession cause.

25. The evidence which Defendant is adducing herein is more or less similar to what she was claiming in the Succession. She is trying to open litigation on issues that were canvassed in the Succession Cause.

26. The title that Defendant produced as D Ex 5 shows that her father is the owner of the land. However, the property of deceased has since been distributed via the Succession Cause and the said title is off no consequence.

27. The Title of the Plaintiff is hence not subject to challenge.

28. Whether Defendant should be evicted"

Section 24 of the land Registration Act provides:-

(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.

29. As Plaintiff is the absolute owner of the land he ought to enjoy all the rights and privileges Appurtenant to his title. Defendant should therefore vacate the land.

30. **Final orders:-**

1) An eviction order is hereby issued against Defendant, her Children and anyone working at her behest from parcel No. ABOTHUGUCHI/ RUIGA/336.

2) A Permanent Injunction is hereby issued against Defendant and anyone else claiming under her behest restraining them from any dealings in land Parcel No. ABOTHUGUCHI/ RUIGA/336.

3) The parties here in are siblings. Normally in such cases, I find it prudent to be lenient to the parties. In this case however, Defendant has been utilizing the land for the last five years in defiance of a lawful judgment of the Court, (Succession Cause). She is hence given 30 days to vacate the land parcel no. 336.

4) Defendant is condemned to pay costs of the suit.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 23rd JANUARY, 2018
IN THE PRESENCE OF:-**

Court Assistant: Janet/Galgalo

Kithinji for Plaintiff present

Rimita for Defendant present

HON. L. N. MBUGUA

ELC JUDGE



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