



**Lokwan v Karamunya & 14 others (Environment & Land Case
21 of 2022) [2023] KEELC 16529 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16529 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 21 OF 2022**

**FO NYAGAKA, J
MARCH 23, 2023**

BETWEEN

POWON LOKWAN PLAINTIFF

AND

JOHNSON KARAMUNYA 1ST DEFENDANT
WILLIAM KARAMUNYA 2ND DEFENDANT
JULIANA CHEPOKAMOLOT 3RD DEFENDANT
ERICK POKOR 4TH DEFENDANT
TECLA LOMUTO 5TH DEFENDANT
JOAN LOKISURI 6TH DEFENDANT
PAUL CHIRKIL 7TH DEFENDANT
SOLOMON KEDIKOU 8TH DEFENDANT
THOMAS LIMOKAL 9TH DEFENDANT
RICHARD LIMOKOL 10TH DEFENDANT
MAMA RUTH LEONARD 11TH DEFENDANT
JULIUS KORWAPUS 12TH DEFENDANT
VERONICA LORIPO 13TH DEFENDANT
MOSES CHEMUTUR 14TH DEFENDANT
**BOARD OF MANAGEMENT CHEPKATA PRIMARY SCHOOL 15TH
DEFENDANT**



JUDGMENT

1. The Plaintiff filed this suit against the fifteen (15) Defendants. He filed a Plaint dated July 29, 2022 on August 4, 2022. He prayed for the following:
 - a. An order of eviction in terms of paragraph 6 of the plaint.
 - b. An order of permanent injunction to restrain the defendants, their servants and/or agents, members of their families (where applicable) and all those who claim through them from trespassing or continuing trespassing upon the suit premises or in whatever manner interfering with the plaintiff's quiet possession and use of the suit premises.
 - c. The OCS Kachibora Police Station to provide security and oversee the eviction of the defendants.
 - d. Costs.
 - e. Interest on (b) and (c) above (sic)
2. In spite of proper service of summons, the defendants failed to enter appearances or file their defences. Consequently, on October 17, 2022, interlocutory judgment was entered against the defendants jointly and severally.

The Plaintiff's Case

3. The Plaintiff herein, a seventy-two (72) year old one Powon Lokwang, testified that he was the registered owner of all that parcel of land namely West Pokot/Chepkono/775. He produced a copy of the title deed marked P.Exhibit 1. The same was obtained in 1968 from Chepkono Adjudication Area.
4. The deceased Loripo Chemurtur was the Defendants' relative. During his lifetime, he sued the Plaintiff claiming ownership of the suit property before the Land Adjudication and Settlement Officer West Pokot District. The Plaintiff produced the proceedings marked P.Exhibit 3. The upshot of the proceedings was that a ruling was made in favor of the deceased.
5. Dissatisfied with the findings, the plaintiff appealed to the Minister. He relied on several letters dated January 26, 1998, September 20, 1999, January 26, 2000, February 22, 2005, May 4, 2007 and May 26, 2008 marked P.Exhibit 4, P.Exhibit 5, P.Exhibit 6, PExh7, P.Exhibit 8 and P.Exhibit 9 respectively to demonstrate a pending appeal.
6. Upon the deceased's death, the defendants failed to take out letters of administration of his estate despite being asked by to do so. As such, the court issued the plaintiff with the said Letters of Administration confirmed in Kapenguria SRMC Succession Cause No. 27 of 2017. The grant as well as its confirmation were marked P.Exhibit 2. Following issuance of those letters, the Plaintiff commenced the process transmission from which the title deed was issued to him on December 21, 2021.
7. In spite of the above, the defendants have deliberately and unlawfully trespassed on the same and erected structure thereon. The defendants have continued to live on the parcel of land denying the plaintiff's right to quiet enjoyment and use of the suit premises. It is for the above reasons that the Plaintiff urged this court to grant the reliefs sought.



Analysis and Disposition

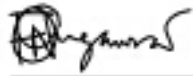
8. I have carefully considered the pleadings, the evidence and the law. The Plaintiff's evidence is that he is the registered proprietor of all that parcel of land namely West Pokot/Chepkono/775. The title was registered in his favor on November 22, 2021.
9. Section 26 (1) of the [Land Registration Act](#) provides that the certificate of title issued by the Registrar shall be taken by all courts as prima facie evidence that the proprietor is the absolute and indefeasible owner. Such a title shall not be subject to challenge except on the ground of fraud, misrepresentation or where the certificate was acquired by means of illegality, unprocedurally or through a corrupt scheme.
10. In that respect, this court finds that in the absence of controverted evidence, from his evidence above, the plaintiff is the lawful registered owner of the suit land. He seeks the orders sought in his plaint because, in his evidence, the defendants have unlawfully trespassed on the suit land. The defendants did not rebut this evidence to either justify their occupation or explain why they trespassed on the suit land.
11. Regarding mesne profits, I find that although the plaintiff alluded to the same in paragraph 6 of the Plaint as being one of his claims, he did not play for and prove them. For that reason, that claim must fail. It is trite law that a party pleading mesne profits must conjunctively plead and prove. I am guided by the holding of the Court of Appeal decision in Peter Mwangi Mbuthia & another vs. Samow Edin Osman [2014] eKLR and which position I wholly adopt thus:

“We agree with counsel for the appellants that it was incumbent upon the respondent to place material before the court demonstrating how the amount that was claimed for mesne profits was arrived at. Absent that, the learned judge erred in awarding an amount that was neither substantiated nor established.”

12. Be that as it may, I find that the plaintiff's claim succeeds in light of my analysis captured in paragraph 8, 9 and 10 of this judgment. Consequently, judgment is entered for the Plaintiff as against the defendants in the following terms:
 - a. An order of eviction be and is hereby issued against the defendants.
 - b. A permanent injunction be and is hereby issued restraining the defendants, their servants and/or agents, members of their families (where applicable) and all those who claim through them from trespassing or continuing trespassing upon the suit premises or in whatever manner interfering with the Plaintiff's quiet possession and use of the suit premises.
 - c. The OCS Kachibora Police Station shall provide security in the process of the eviction of the defendants.
 - d. The plaintiff is awarded costs together with interest thereon from the date of judgment until payment in full.
13. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 23RD DAY OF MARCH, 2023





HON. DR. *JUR* FRED NYAGAKA
JUDGE, ELC KITALE

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