



**Cheruiyot v Mutai & 6 others (Environment & Land Case
164 of 2017) [2023] KEELC 16999 (KLR) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 16999 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 164 OF 2017**

**LA OMOLLO, J
APRIL 20, 2023**

BETWEEN

DANIEL KIPKORIR CHERUIYOT PLAINTIFF

AND

KIPKEMOI MUTAI 1ST DEFENDANT

WALTER KIBET NGENO 2ND DEFENDANT

PHILIP KORKOREN 3RD DEFENDANT

GEOFFREY LANGAT 4TH DEFENDANT

GEOFFREY LANGAT 5TH DEFENDANT

DAVID CHELULE 6TH DEFENDANT

WILLY RUTTO 7TH DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit vide a plaint dated April 11, 2017. He avers that he is the owner of all that parcel of land known as P/NO Nakuru/nyota Pendile Tregana/26 the suit property herein.
2. It is his averment that he bought the suit land from one Cheruiyot Arap Too.
3. He avers that his claim is to have the Defendants evicted from his parcel of land and an order of injunction issued restraining them from entering, trespassing, dealing or interfering with the suit land.
4. The Plaintiff prays for judgment against the Defendants for
 - a. An order for eviction of the Defendants and demolition of their structures.



- b. An order for an injunction restraining the Defendants by themselves, their agents, servants and/or employees from entering, trespassing, developing, cultivating, planting, threatening the Plaintiff, his servants, agents and /or employees or in any other way interfering with the Plaintiff's enjoyment of his parcel of land known as Nakuru/nyota Pendle Tregana/26.
 - c. Costs of this suit.
5. The Defendants filed their Written Statement of Defence dated May 22, 2017 wherein they state that there is a similar suit no 598 of 2016 before this court.
 6. They make general denials to all the averments in the plaint and pray that the suit be dismissed with costs.

Plaintiff's Evidence.

7. At the hearing, Daniel Kipkorir Cheruiyot testified as PW1. His witness statement dated April 11, 2017 was adopted as part of his evidence. He introduced himself as a businessman adding that he lives in Kericho.
8. He stated that he has a written statement dated April 14, 2017 and prayed that it be adopted as part of his evidence.
9. He testified that the suit land is Nakuru/ Nyota Pendle Tregana/26 situated in Keringet and measuring 6.3 Ha and that he bought it from Cheruiyot Arap Too.
10. It was his further testimony that before purchase, the vendor gave him a copy of the allotment letter from Agricultural Development Corporation. He produced the copy of the allotment letter which was marked as Exhibit P1.
11. He went on to testify that after purchase he was shown the suit land and given a letter dated September 10, 2001. The said letter, he explained, shows that he (Cheruiyot Arap Too) was offered plot No 26. The said letter is from the Director of Land Adjudication and Settlement. It was produced and marked as Exhibit P2.
12. He went on to testify that Cheruiyot Arap Too also gave him a payment receipt for Kshs 55,200 in his name. He produced a copy of the said receipt which was marked as Exhibit P3.
13. It was his further testimony that after he was satisfied as to Cheruiyot Arap Too ownership, they approached M/S Bett & Company Advocates to draw an agreement and after execution, he paid Kshs 450,000 to Cheruiyot Arap Too while at the Advocates office. He produced a copy of the sale agreement dated September 19, 1996 which was marked as Exhibit P4.
14. He testified that he took possession of the land and lived on it with his son Raymond Rono adding that his brother Christopher Bii, subsequently, joined them on the suit land.
15. He further testified that in 2015 some people invaded the suit land, demolished his houses and started building theirs houses next to his. He went on to state that he feared for his life and moved out of the suit land leaving behind his son and brother.
16. It was his testimony that the 1st and 2nd Defendants took occupation and later brought the other Defendants who also took occupation.
17. He added that after he purchased the suit land, the same was registered in his name and he was issued with a certificate. He produced a copy of the Certificate issued on March 26, 2013 which was marked as Exhibit P5.



18. The Plaintiff's testimony is that he only occupies a small portion of the suit land because the defendants have taken occupation of a larger portion of it.
19. In his witness statement dated April 11, 2017, PW1 states that the seller Cheruiyot Arap Too signed all the necessary transfer documents after which he was issued with the title to the suit land.
20. He further states that in 2010 the 1st and 2nd Defendants claimed a portion of the suit property but he reported them to the relevant authorities after which the situation was contained.
21. PW1 also states that the 1st and 2nd Defendants obtained money by false pretense and sold portions of the suit property to strangers.
22. He further states that the Defendants forged the allotment letter but could not produce their payment receipts to support their claim.
23. In his statement, PW1 states that the Defendants filed a case against his son and brother being Nakuru ELC 598 of 2016 in an attempt to illegally evict them from the suit land.
24. The Plaintiff concluded his oral testimony by praying that the court issues orders as contained in the plaint.
25. That marked the close of the Plaintiff's case.
26. The Defendants entered appearance on May 22, 2017 but did not tender evidence in their defence.
27. The Plaintiff withdrew his case against the 7th Defendant for the reason that the 7th Defendant is deceased.

Issues For Determination.

28. The Plaintiff filed his submissions on November 18, 2022. In his submissions, he gives a summary of his evidence adding that he has given a consistent testimony of how he acquired the suit property.
29. The Plaintiff relies on the case of *Juliana Mulikwa Muindi Vs Board of Management Yangua Mixed Secondary School and Principal, Yangua Mixed Secondary School* [2018] eKLR. He submits that the balance of proof in civil cases is that of on a balance of probabilities.
30. He also cites Section 24 (a) of the *Land Registration Act* No 3 of 2012 and submits that he has fully discharged the burden of proof to the required balance of probability.
31. In conclusion, he argues that he is entitled to the prayers sought and urges the court to grant him orders as prayed so that he could enjoy his rights as provided under the Section 24 (a) of the *Land Registration Act* No 3 of 2012.

Analysis And Determination.

32. I have perused the pleadings and documents tendered in evidence in this suit, heard the Plaintiff testify, read submissions and judicial decisions cited and I have taken them into consideration in making my determination.
33. It is my considered view that the issues for determination are:
 - a. Whether the Plaintiff is entitled to the orders sought in the Plaint.
 - b. Which party should bear the costs of the suit?



A. Whether the Plaintiff is entitled to the orders sought in the Plaintiff.

34. The Plaintiff tendered evidence intended to demonstrate the root of his title to the suit property. He sequentially explained the efforts made by him in respect of due diligence, execution of the agreement, transfer and registration of title from one Cheruiyot Arap Too to his name.
35. To this end, he has produced an allotment letter from Agricultural Development corporation, letter of offer from the director of Land Adjudication and settlement, a receipt for payment of Kshs 55,200.
36. The letter of allocation is dated October 4, 1990. It is in the name of Cheruiyot Arap Too and is in respect of land at ADC Nyota- described as 8327/306. It informs Cheruiyot Arap Too that the Government has allocated him, for purchase, 15 acres of land at ADC Nyota complex. The letter also asks the Senior complex manager to show him his land and that he will be informed of the mode of payment etc. The letter advises him, in the meantime, to take possession of the said land.
37. The letter of offer is dated September 10, 2001 in the name of Cheruiyot Arap Too and is for Plot No 26 Nyota of approximately 6.3 Ha at Pendle/Tregana Settlement Scheme. It informs him that he has been offered the said plot. It asks him to report to the settlement officer to be shown the plot boundaries and be issued with a letter before documentation. It also informs him that should he accept the offer, he is required to pay the full purchase price at once or in three instalments.
38. The receipt produced as evidence of payment is dated May 10, 2005. Its for payment of Kshs 55,000. Its for part payment of purchase of land described as Nyota Pendle/Tregana 613/26.
39. The Plaintiff has also produced an agreement for the sale of all that parcel of land measuring 15 acres comprised in ADC Nyota Farm in molo namely LR 8327/306 executed on September 19, 1996 between him and Cheruiyot Arap Too.
40. Finally, the Plaintiff produced a copy of the title deed issued in his name it is dated March 26, 2013.
41. Section 28 of the Registered Land Act provides as follows:

The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject –

- a to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- b unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register:

Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.

42. In civil cases, a Plaintiff is expected to prove his case on a balance of probabilities. In the case of *Shaneebal Limited Vs County Government of Machakos* [2018] eKLR, the Learned Judge cited with



approval the decision in Karuru Munyororo Vs Joseph Ndumia Murage & Another Nyeri HCCC No 95 of 1988, wherein it was as follows;

“The Plaintiff proved on a balance of probability that she was entitled to the orders sought in the plaint and in the absence of the Defendants and or their counsel to cross-examine her on the evidence, the Plaintiff’s evidence remained unchallenged and uncontroverted. It was thus credible and it is the kind of evidence that a court of law should be able to act upon”.

43. I find that the Plaintiff has discharged his burden of proof and that this court has a duty to protect his proprietary rights as set out in section 28 of the registered Land Act. He has not only produced a copy of the title deed as evidence, but has produced several other documents that offer explanations as to the root of his title.
44. The Defendants were given an opportunity to defend the suit but they chose not to as a result of which the Plaintiff’s evidence remains uncontroverted.
45. In the circumstances, nothing is easier than to declare that the Land parcel Nakuru/Nyota Pendle Tregana/26 belongs to the Plaintiff.
46. I find also, that the 1st-6th Defendants are illegally in occupation of the suit land and ought to be evicted.

B. Which party should bear the costs of the suit?

47. The general rule is that costs shall follow the event. This is in accordance with the provisions of Section 27 of the Civil Procedure Act (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise.

Disposition.

48. In the result, I find that the Plaintiff’s suit against the 1st – 6th Defendants succeeds. Consequently, judgment is entered in favour of the Plaintiff in the following terms:
 - a. An eviction order is hereby issued against the 1st – 6th Defendants, their servants and/or agents in respect of Land parcel No Nakuru/nyota Pendle Tregana/26.
 - b. An order of permanent injunction is hereby issued restraining the 1st – 6th Defendants either by themselves, their agents, servants and/or employees from entering, trespassing, developing, cultivating, planting, threatening the plaintiff, his servants, agents and /or employees or in any other way interfering with the Plaintiff’s property known as Nakuru/nyota Pendle Tregana/26.
 - c. The order of eviction in (a) above shall be executed after 90 days upon service of this judgement and/or decree.
 - d. The Plaintiff shall have the costs of this suit from the date of judgment until payment in full.
49. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 20TH DAY OF APRIL, 2023

L A OMOLLO

JUDGE

In the presence of: -

Miss Esang for Kipkenei for the Plaintiff



**No appearance for the ^{Defendants}
Court Assistant; Ms. Monica Wanjohi.**

