



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

CIVIL SUIT NO. 194 OF 2017

ELIZABETH PAMELA NECHESA:::::::::::::PLAINTIFF

VERSUS

ROSALIA ITALIA:::::::::::::DEFENDANT

JUDGEMENT

The plaintiff's case is that, at all material times, she was the absolute registered owner of Title Number KAKAMEGA/SEREM/10 having legally acquired the same vide a certificate of confirmation of Grant issued vide Hamisi Law Courts Succession Cause Number 13 of 2015. The plaintiff has put structures on the said parcel where she has been living to date. The defendant who is a stranger to the plaintiff has without any colour of rights and or justifiable reasons or excuses intermeddled with the plaintiff's parcel of land by cultivating on the said parcel. The actions of the defendant amounts to trespassing on the said parcel of land. The plaintiff's efforts to forcibly remove the defendant from the said parcel have proved futile among them referring the matter to the Hamisi Law Courts Succession Case Number 13 of 2015 brought under a certificate of urgency. The Defendant has adamantly refused to vacate the plaintiff's parcel of land to date hence necessitating her to seek legal redress through the Honourable Court. The Defendant's actions are detrimental to the plaintiff as she continues to occupy the plaintiff's parcel of land and cultivating it yet she does not have any legal rights over the said parcel. The plaintiff prays for judgment against the defendant for, an order for eviction to issue and forcibly remove the defendant from the said parcel of land being KAKAMEGA/SEREM/10. The O.C.S Serem Police Station to effect and ensure compliance of the said orders and cost of the suit to be borne by the defendant.

PWI, the plaintiff testified that, she is the absolute registered owner of Land Parcel Number KAKAMEGA/SEREM/10 measuring 0.42 Hectares (PEx1& 2 is a copy of the title deed and a certificate of official search for the same). That she acquired the same vide certificate of confirmation of grant issued vide Hamisi Law Courts Succession Cause No. 13 of 2015 (PEx3 copy of the grant). The said parcel of land belonged to her late husband one Samuel Lusichi Amakanga. The defendant is a total stranger to the plaintiff. The defendant has without any colour of rights and or justifiable reasons or excuses gone ahead to encroach on the plaintiff's parcel of land. The defendant has been cultivating on the plaintiff's parcel of land. The defendant's action amounts to trespassing and or intermeddling with the plaintiff's parcel of land. The plaintiff has tried to plead with the defendant to vacate his parcel of land but she has either remained adamant, negligent and or arrogant. The plaintiff has also sought legal redress vide Hamisi Law Court Succession Cause No. 13 of 2015 brought under certificate of urgency but the defendant has continually remained defiant and evasive. The defendant's actions have forced her to seek legal redress through this court for orders that she be forcefully evicted from her parcel of land.

The defendant was served but failed to enter appearance or file any papers in her defence. This court has considered the plaintiff's case and the submissions therein. 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.”

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. **Hon Justice Munyao Sila** 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”.

The plaintiff one Elizabeth Pamela Nechesa gave evidence and it has been established that she is the absolute registered owner of land parcel No. KAKAMEGA/SEREM/10 measuring 0.42 Hectares (Zero point Four Two Hectares) by producing the title deed and certificate of search PEx 1 & 2). She acquired the same having done succession of her late husband one Samuel Lusichi Amakanga vide Hamisi Law Courts Succession Cause Number 15 of 2015. She was later issued with a certificate of confirmation of grant (PEx3). It is then that she went and processed a title deed for the said parcel. There is no evidence that the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. The plaintiff must enjoy absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto. The Defendant who is a total stranger to her has trespassed on her parcel of land and has gone ahead to cultivate the same without her consent. The actions of the defendant have denied her access to her late husband’s property. The same have also been detrimental to her since she cannot fully enjoy peaceful occupation of her late husband’s property (now hers). Due to these actions, I find that she stands to suffer irreparable loss and damages. Her efforts to plead with the defendant to vacate the said parcel have fallen on deaf ears since she has either remained adamant. The plaintiff’s evidence has not been controverted and I find that the plaintiff is the absolute and indefeasible owner. I find the plaintiff has proved his case on a balance of probabilities and grant the following orders;

1. The defendant is given three (3) months to vacate the suit premises KAKAMEGA/SEREM/10 and in default an eviction order to issue forthwith
2. The O.C.S Serem Police Station to effect and ensure compliance of the said orders.
3. Cost of the suit to be borne by the defendant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 14TH DAY OF DECEMBER 2017.

N.A. MATHEKA

JUDGE