



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ENVIRONMENT AND LAND COURT CASE NO. 228 OF 2009

JOHANA KIPRONO KOSKEI PLAINTIFF

VERSUS

SELINA CHEPNGETICH CHEPYOSET 1ST DEFENDANT

ROBERT KIPNGETICH CHEPKWONY 2ND DEFENDANT

JUDGMENT

1. The plaintiff filed the instant suit against the defendants vide a plaint dated 6th November 2009. The plaintiff claims in the plaint that he purchased land parcel **LR No. Transmara/Kimintet “B”/1122** (hereinafter referred to as “suit property”) from one **Kipketer Arap Chepyoset** vide an agreement of sale dated 2nd March 2009 and that the parcel of land was transferred to him and he was issued with a title deed of the suit property on 15th April 2009. The plaintiff states that the defendants in April 2009 trespassed onto the suit property and have continued in possession and occupation of the land to the prejudice of the plaintiff. The plaintiff seeks an order for the eviction of the defendants and an order of permanent injunction and the costs of the suit.
2. The defendants were served with summons to enter appearance together with the plaint as per the affidavits of service dated 15th March 2010 by one **Richard Kiplangat Kirui** filed in court on 20th May 2010. The defendants did not enter appearance and/or file any defence. The matter was fixed for formal proof hearing on 25th November 2015 when the court permitted the matter to proceed ex parte.
3. The plaintiff Johana Kiprono Koskei testified as PW1 in support of the plaintiff’s claims and was the sole witness. The plaintiff testified that he purchased the suit property from the late Kipketer Arap Chepyoset for the consideration of kshs. 360,000/=. He produced a sale and purchase of land agreement dated 2nd March 2009 as plaintiff Exhibit I. The agreement related to land parcel **LR No. Transmara/Kimintet “B”/1122** measuring 3.05hectares. As per the agreement the full purchase price of kshs. 360,000/= was paid to the vendor before the execution of the agreement and receipt was acknowledged. The plaintiff testified that the suit land was transferred to him on 15th April 2009 and a title deed issued in his name. The plaintiff produced the copy of the title deed and a duly certified abstract of the title as plaintiff exhibits 2 and 3 respectively. The plaintiff testified that the defendants entered onto his parcel of land in early October 2009 which prompted the plaintiff to cause a demand letter dated 7th October 2009 from the plaintiff’s advocates addressed to the defendants to be sent out to the defendants requesting them to vacate which they did not do precipitating the institution of the instant suit. The plaintiff further produced in evidence a certificate of official search in respect of land parcel **LR No. Transmara/Kimintet “B”/1122** dated 8th September 2015 which showed that the plaintiff was the registered owner of the suit property and has been so registered since 15th April 2009.

4. The plaintiff testified the defendants occupy nearly one half portion of his land where they have constructed houses and carry out cultivation. The plaintiff seeks an order of eviction of the defendants and a permanent injunction restraining them from further trespass.
5. I have considered the evidence of the plaintiff which is uncontroverted. The evidence establishes the plaintiff is the registered owner of the suit property he having lawfully purchased the same from the previous proprietor, Kipketer Arap Chepyoset who the abstract of title shows was registered as owner on 3rd October 2004. As the registered owner of the suit property the plaintiffs rights as under Section 25 (1) of the **Land Registration Act No. 3 of 2012** are absolute and indefeasible save as provided under the Act.

Section 25 (1) provides:-

25.(1) The rights of a proprietor, whether acquired on first registration or 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. **To such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.**
6. The occupation by the defendants of a portion of the plaintiff’s land without his consent/approval is unlawful. The occupation by the defendants of the portion has not been explained as they never appeared and/or filed a defence to explain the basis on which they occupy the land. The plaintiff has satisfied the court that he is the registered owner of the suit property and as such owner he is entitled to exclusive use of his land and the defendants have no right to be on his land.
 7. Having considered the evidence adduced by the plaintiff I am satisfied that the plaintiff has established his case on a balance of probabilities and I accordingly enter judgment in his favour and make the following orders:-
 - i. **That the defendants, their agents and servants are ordered to vacate land parcel LR No. Transmara/Kimintet “B”/1122 within 30 days from the date of being served with the decree herein failing which an eviction order to issue on application.**
 - ii. **An order of permanent injunction be and is hereby issued against the defendants restraining them from in any manner interfering with the plaintiff’s quiet possession and use of the suit land.**
 - iii. **The costs of the suit are awarded to the plaintiff.**

Judgment dated, signed and delivered at Kisii this 26th day of February, 2016.

J. M MUTUNGI

JUDGE

In the presence of:

..... for the plaintiff

..... for the 1st defendant

..... for the 2nd defendant

J. M. MUTUNGI

JUDGE