



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII

ENVIRONMENT AND LAND COURT CASE NO. 441 OF 2014

EZRA ODONDI ONYANGO.....PLAINTIFF

VERSUS

JULITA ANGWEYO.....1ST DEFENDANT

JECKONIA AMOLO ANGWEYO.....2ND DEFENDANT

OTIENO ANGWEYO.....3RD DEFENDANT

JUDGMENT

1. The plaintiff filed the plaint dated 17th November 2014 claiming to be the registered owner of land parcel **LR No. North Sakwa/Kamasoga/1994** (hereinafter referred to as the suit property) which he alleged the defendants on or about 2010 trespassed into and built structures thereon where they reside. The plaintiff avers that he has demanded that the defendants vacate and deliver vacant possession of the suit property to him but the defendants have failed, refused and/or neglected to vacate and persist in trespass in the suit property.

2. The plaintiff seeks judgment against the defendants jointly and severally for:-

i. **Declaration that the plaintiff is the registered and/or lawful owner of LR No. North Sakwa/Kamasoga/1994.**

ii. **An order of eviction against the defendants, their agents, and/or servants from land parcel LR No. North Sakwa/ Kamasoga/1994.**

iii. **Permanent injunction restraining the defendants either by themselves, agents, servants or anyone claiming under them from entering upon, re-entering, trespassing onto, interfering with or in any other manner dealing with the suit property.**

iv. **General damages for trespass together with interest.**

v. **Costs of the suit.**

3. The defendants were served with summons to enter appearance on 21st November 2014 by one John Patrick Onyango, a process server who made an affidavit of service sworn on 24th November 2014 but

filed in court on 29th April 2015. The defendants did not enter appearance and the plaintiff applied for interlocutory judgment vide a request for judgment dated 2nd March 2015 but filed in court on 29th April 2015.

4. The suit was listed for formal proof hearing before me on 17th February 2016. The plaintiff and his advocate attended court and the plaintiff testified as the sole witness in proof of his case. The plaintiff testified that he is the registered owner of land parcel **LR No. North Sakwa/Kamasoga/1994** measuring 0.4Ha and that he inherited the parcel of land from his father who is now deceased. The plaintiff further stated that his parcel of land was a subdivision out of land parcel **LR No. North Sakwa/Kamasoga/1953** which was a much bigger parcel of land.

5. The plaintiff further testified that sometime in 2010 the 1st defendant together with the 2nd and 3rd defendants who are her sons unlawfully entered onto his parcel of land **LR No. North Sakwa/Kamasoga/1994** and put up some structures thereon in which they have been residing. The plaintiff requested the defendants to move out of his land but they refused claiming the parcel of land was theirs as they claimed that they had purchased the same although they did not produce any documents to support their assertion. The plaintiff stated he reported the matter to their local sub chief who summoned the defendants but even before the sub chief the defendants did not produce any evidence or documents to support their claim of ownership of the suit property. The sub chief gave the plaintiff a letter confirming he did not find any evidence to support the claims by the defendants. As per the sub chief the suit land belonged to the plaintiff.

6. The plaintiff stated he made a formal demand through his advocates to the defendants to vacate his land vide the advocates letter of 1st November 2014 but the defendants did not oblige making it necessary to institute the instant suit. The plaintiff produced the following documents in support of his case.

- i. Copy of title of land parcel North Sakwa/Kamasoga/1953.
- ii. Copy of official search of land title North Sakwa/Kamasoga/ 1994 dated 11th November 2014.
- iii. Letter from the Assistant Chief dated 31st May 2014.
- iv. Advocates letter dated 1st November 2014.

7. Upon reviewing the evidence tendered by the plaintiff and the documents produced in support there is no doubt the plaintiff is the registered owner of land parcel **LR No. North Sakwa/ Kamasoga/ 1994** and has been so registered since 5th October 2006 as per the certificate of official search. As such registered owner the plaintiff is entitled to have exclusive use and right to the property to the exclusion of all others. Sections 24, 25 and 26 of the **Land Registration Act, 2012** confers on the registered proprietor of land absolute rights of ownership and interest over the land and his rights and interest over the land are indefeasible and can only be challenged on account of fraud and/or misrepresentation to which he is shown to be a party or if it is shown the title was illegally and unprocedurally obtained and/or it was procured through a corrupt scheme. These grounds of challenge are provided under Section 26 (1) (a) and (b) of the **Land Registration Act, 2012** but the same are inapplicable in the present case.

8. The evidence of the plaintiff is uncontroverted the defendants having not appeared and/or filed any defence. On the basis of the evidence tendered by the plaintiff I am satisfied the plaintiff has proved his case on a balance of probability and I accordingly enter judgment in favour of the plaintiff on the following terms:-

- i. **That the plaintiff is the lawful owner of land parcel LR No. North Sakwa/Kamasoga/1994.**
- ii. **The defendants are ordered and directed to vacate land parcel LR No. North Sakwa/Kamasoga/1994 within 30 days of being served with a copy of the decree herein failing which an order of eviction to issue on application.**

iii. An order of permanent injunction be and is hereby issued against the defendants, their agents, servants or anyone claiming under them restraining them from entering upon trespassing onto or in any manner interfering or dealing with the suit property, LR No. North Sakwa/ Kamasoga/1994.

iv. Costs of the suit are awarded to the plaintiff against the defendants jointly and/or severally.

Judgment dated, signed and delivered at Kisii this 22nd day of April, 2016.

J. M MUTUNGI

JUDGE

In the presence of:

Mr. Ochwangi for the plaintiff

N/A for the defendant

J. M. MUTUNGI

JUDGE