



REPUBLIC OF KENYA



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Purkoret Holdings Limited v Njogu & 16 others & 2 others (Environment & Land Case 20 of 2017) [2022] KEELC 2979 (KLR) (19 May 2022) (Judgment)

Neutral citation: [2022] KEELC 2979 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 20 OF 2017**

CG MBOGO, J

MAY 19, 2022

BETWEEN

PURKORET HOLDINGS LIMITED PLAINTIFF

AND

SAMWEL MURITHI NJOGU & 16 OTHERS 1ST DEFENDANT

WALTER OLE YENKO 2ND DEFENDANT

WILSON TUIKON 3RD DEFENDANT

JUDGMENT

1. Vide a Complaint dated 18th November, 2011, the plaintiff seeks the following orders:-
 - a. A permanent injunction do issue restraining the defendants, their agents, servants and/ or employees from entering, occupying, constructing, letting, collecting rent or in any other manner dealing with land parcel number Cis Mara/Oleleshwa/2A.
 - b. General damages for trespass.
 - c. A mandatory injunction do issue against the defendants, their servants, agents and or employees to vacate and move all the permanent structures erected on land parcel number Cis Mara/Oleleshwa/ 267 and in default an order for eviction do issue.
 - d. Costs of the suit.
2. By consent the matter was withdrawn against the 1st defendant on 18th October, 2016 and directions given that the matter proceeds for formal proof as against the third defendant.
3. On 13th July, 2021 the consent dated 8th April, 2021 between the plaintiff and the 1st defendant was adopted and further directions given that the matter proceeds for formal proof against the 3rd defendant. The plaintiff withdrew the suit against the 2nd defendant.



4. The matter proceeded for formal proof on 9th November, 2021 where the plaintiff's first witness-Maranka Ole Otune (PW1) testified that he is the chairman and one of the directors of the plaintiff. He relied on his statement dated 18th November, 2011 and he also produced 7 documents as P.Exhibit 1-7 respectively.
5. That plaintiff filed written submissions dated 29th November, 2021. The plaintiff raised three issues for determination as follows: -
 1. Whether the plaintiff is the registered owner of all that land known as Cis-Mara/Oleleshwa/267; and if the answer is in the affirmative,
 2. Whether the 3rd defendant illegally trespassed onto the plaintiff's parcel of land known as Cis Mara/Oleleshwa/267.
 3. Whether the plaintiff is entitled to the orders sought.
6. The plaintiff submitted that Sections 24 (a) and 26 (1) of the Land Registration Act are clear on ownership of land and that a 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 owner. It is evident that the plaintiff produced the original title and search of the suit land as exhibits and such evidence remains uncontroverted.
7. The plaintiff further submitted that the 3rd defendant has encroached on the suit land the same amounts to trespass as there is no contrary evidence on the part of the 3rd defendant to justify the legality of his occupation on the said suit land. The plaintiff relied on Section 3 (1) of the Trespass Act. The plaintiff further submitted that parties are bound by their pleadings as was held in the case of David Sironga Ole Tukai versus Francis Arap Muge & Others C No. 76 of 2014. On permanent injunction, the plaintiff submitted that a permanent injunction would issue after the rights of the contesting parties have been adjudicated and a final decision reached. The plaintiff relied on the case of Kenya Power & Lighting Company Limited versus Sherif Molana Habib [2018] eKLR.
8. On general damages, the plaintiff submitted it has never utilized the suit land as a result of the defendants' illegal occupation and utilization and for this reason, it is entitled to general damages. The plaintiff relied on the case of Joseph Mung'aya Makotsi versus Kenya Power & Lighting Company Limited & Another [2017] eKLR and Willesden Investment Limited versus Kenya Hotel Properties Limited NBI HCC No. 367 of 2000.
9. I have considered the uncontroverted evidence adduced in court, the documents produced as exhibits and the fact that the 3rd defendant neither entered appearance nor did he file his defence. I have also considered the fact that the plaintiff is the registered proprietor of the suit land together with all rights and privileges belonging or appurtenant thereto.
10. It is evident that the 3rd defendant herein was served with the Summons to Enter Appearance but he chose not to defend the case. Although the suit was undefended, yet the plaintiff still had the duty to formally prove its case on the balance of probabilities as required by law.
11. I have also considered the fact that the 3rd defendant herein without color of right trespassed into the plaintiff's suit land and utilized the same.
12. I find the issue for determination as being whether the plaintiff is entitled to the orders so sought in its plaint and who is to pay for costs of the suit.



13. From the documentary evidence, vide a copy of the Title Deed for title No Cis Mara/Oleleshwa/ 267 herein produced as Exh. 1, the plaintiff herein proved that it was the registered proprietor of the suit land, its registration as owner of the suit land was also a first registration.
14. The provision of Section 24(a) and 25(1) of the [Land Registration Act](#) outlines the interests and rights of a registered proprietor as follows;
- Interest conferred by registration
- Subject to this Act—
- (a) 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; and
- Rights of a proprietor
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—
15. The law is very clear on the position of a holder of a title deed in respect of land. Section 26(1) of the [Land Registration Act](#) provides as follows:
- “The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... 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.
16. It will be seen from the above provisions that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, un-procedurally, or through a corrupt scheme.
17. The 3rd defendant did not adduce any evidence that the plaintiff acquired title to the suit land illegally, un-procedurally or through a corrupt scheme. Based on the evidence adduced above, and in relying on Section 26(1) of the [Land Registration Act](#), the Court finds that the plaintiff has indeed satisfied the legal proviso that it is the proprietor of the suit land and hence has absolute ownership including all rights and privileges appurtenant to it.
18. As to whether the 3rd defendant has encroached on the suit land, the uncontroverted evidence adduced by the plaintiff as well as the production of the Title Deed are proof enough that indeed the 3rd defendant has encroached on the plaintiff's land.



19. Section 24 (a) of the *Land Registration Act* stipulates as follows:

' subject to this Act, the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto...'

20. These provisions empower the plaintiff by virtue of being registered owner of the suit land with vested rights and privileges therein and which no person should interfere with it.

21. I find that the plaintiff is indeed entitled to protection by the law from the 3rd defendant who has interfered with its rights and privileges over the suit land.

22. The issue as to whether the plaintiff suffered any loss or damage on account of the impugned activities by the 3rd defendant, I find that there being no evidence that the 3rd defendant's action of entering into the plaintiff's land and carrying out the impugned activities was lawful or otherwise legally sanctioned, the defendant's action therefore constituted trespass to land.

23. It is trite law that trespass to land is actionable per se (without proof of any damage). See the case of *Park Towers Ltd v. John Mithamo Njika & 7 others* (2014) eKLR where J.M Mutungi J., stated: -

'I agree with the learned Judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique facts and circumstances of each case...'

In the circumstances, I am of the view that the sum of kshs. 2,000,000/- would suffice and this is the amount that I will award to the plaintiff in my judgement.

24. Arising from the above, I find and hold the plaintiff's suit against the 3rd defendant has been proved on a balance of probabilities. I accordingly enter judgment in favor of the plaintiff as against the 3rd defendant in the following terms:

- a. A permanent injunction is herein issued restraining the 3rd Defendant by himself, servants, agents or employees, from entering, occupying, constructing, letting, collecting rent or in any other manner dealing with Land Parcel Number Cis Mara/Oleleshwa/ 267.
- b. General damages of Kshs. 2,000, 000/= shall be paid by the 3rd defendant to the plaintiff for the wrongful entry.
- c. Mandatory injunction is hereby issued against the 3rd defendant, his servant, agents and or employees to vacate and move all the structures erected on land parcel number Cis Mara/ Oleleshwa/267.
- d. Costs of the suit and interests.

It is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL ON 19TH MAY, 2022.

MBOGO C.G

JUDGE

19/5/2022

In the presence of: -



