



REPUBLIC OF KENYA

High Court at Eldoret

Environmental & Land Case 916A of 2012

SARAH JEPKOSGEI KIMUTAI.....PLAINTIFF

VS

TITO TARUS & 5 OTHERS.....DEFENDANT

J U D G E M E N T

The plaintiff filed this suit against the six defendants principally seeking the following orders:-

- (a) A permanent injunction against the defendants, their agents/servants from interfering, encroaching, or dealing in any other way with the plaintiff's parcel of land known as Eldoret Municipality Block 15/2428; and
- (b) Eviction Orders to remove the defendants and their illegal structures from the plaintiff's parcel of land.

The plaintiff has also prayed for costs of the suit and "any other relief."

The plaintiff on 28/11/2012 withdrew the suit against the 6th defendant and I allowed the matter to proceed for hearing against the 1st-5th defendants. I gave the hearing date of 4th December 2012 in the presence of counsel for the plaintiff and the 1st-5th defendants on 28/11/2012.

On the 4th December 2012, when the matter was called out, Mr. Limo, learned counsel for the plaintiff was present and he stated that he was ready to proceed for hearing. There was no appearance on the part of counsel for the 1st -5th defendants. I noted that it was then 9.20 am and I placed the file aside for the matter to proceed. Later, Mr. Momanyi, learned counsel for the 1st-5th defendants appeared and applied for an adjournment of the suit on the ground that he has filed an application to cease acting. This application for adjournment was opposed by counsel for the plaintiff . I considered the application for adjournment and disallowed the same. It was my position that if counsel for the defendants felt that he had no instructions, then he ought not to have taken the date for hearing. I also felt that it was inappropriate to have an application to cease acting filed on the date of the hearing of the main suit. I also noted that the defendants were absent.

After I disallowed the application for adjournment, Mr. Momanyi, learned counsel for the defendants, walked out of the proceedings.

The matter thereafter proceeded with the plaintiff giving evidence in support of her case. The defendants were not present in court and no evidence has been tendered on their behalf. The evidence of the plaintiff is therefore uncontroverted.

The plaintiff testified that she is the registered owner of the land parcel ELDORET MUNICIPALITY BLOCK 15/2428 measuring 1.592 Hectares. She produced a Certificate of Lease and Certificate of Official Search as exhibits 1 and 2 respectively. The two exhibits indicate that the plaintiff is the registered owner of the leasehold title in the suit land for a term of 99 years from 1.6.1991. She stated that she acquired the suit land after she applied for the same and was issued with a Letter of Allotment. A payment of Kshs.103,220/- was required to be made for the lease and this was duly made and acknowledged. She testified further that she was shown the plot and that she started processing the title deed in the year 2011 after paying the land rates. She eventually obtained a lease which she produced as an exhibit.

It was her evidence that between 1991 and 2011 when she started processing the title deed, she was cultivating maize on the suit land. She produced a ground report dated 22 June 2011 indicating that the suit land was visited and noted to be under maize cultivation. She testified that she made a request to fence the plot which request was granted by the Municipal Council of Eldoret. However, when she went to fence the plot, she was obstructed by the defendants. She also noticed that the defendants had constructed some temporary structures on the suit land. She testified that she reported the matter to the Municipal Council of Eldoret who wrote a letter giving seven (7) days to persons who had engaged in illegal developments on the suit land. She testified that she had also reported her grievances to the District Commissioner, Uasin Gishu, who directed her to see the local chief. It was her evidence that the local chief asked the defendants to move out of the suit land but they declined.

She also testified that she reported the matter to the police post at Kyamumbi but no action was taken against the defendants. It was then that she opted to file the present suit. She testified that the defendants allege to have been in possession of the suit land by virtue of a letter of allotment issued by the Municipal Council of Eldoret but that she had verified from the Municipal Council that the purported letters of allotment were not genuine. She averred that the defendants are occupying the suit land illegally and are interfering with her ownership. She asked that they be evicted from the suit land and that they be stopped from any further interference.

It is against the backdrop of the above evidence that I make this judgement.

As noted earlier, the plaintiff's evidence is uncontroverted as no evidence has been called forth by the defendants. It is not in doubt from the evidence on record, that the plaintiff is holder of a leasehold title over the suit land for a term of 99 years from 1.6.1991. She holds a Certificate of Title to the leasehold interest comprised in the suit land and under Section 26 of the Land Registration Act, 2012, the certificate of title is deemed to be conclusive evidence of proprietorship. The plaintiff has given evidence that the defendants are illegally on the land and that she would want them evicted and restrained from further interference. As registered owner of the leasehold title, the plaintiff is entitled to enjoy her bundle of rights on the suit land free from disturbance. It is incumbent upon this court to protect her rights.

The defendants in their defence had raised the issue that they have been on the subject parcel of land for a period in excess of 12 years. However, in the absence of any evidence to confirm this, I must take it that this claim is unsupported.

I see no reason why I should not enter judgment for the plaintiff. I therefore enter judgement for the plaintiff against the 1st-5th defendants as prayed. Specifically I do order that the defendants and/or their servants agents be restrained by way of a permanent injunction from interfering, encroaching, or dealing in any other way with the plaintiff's parcel of land known as Eldoret Municipality Block 15/2428. I also issue an order of eviction to remove the defendants and their illegal structures from the suit land. I award the plaintiff the costs of this suit.

DATED AND DELIVERED THIS 20TH DAY OF DECEMBER 2012.

JUSTICE MUNYAO SILA.

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of

Mr. Mitei holding brief for Mr. Limo for the plaintiff

N/A for Ms Anassi Momanyi & Co for 1st – 5th defendant