



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KERICHO

Civil Case 43 of 2006

WALTER KIPCHIRCHIR KOECH.....PLAINTIFF

VERSUS

TAPYOBII MELILDEFENDANT

JUDGMENT

The plaintiff, Walter Kipchirchir Koech filed suit against the defendant Tapnyobii Melil seeking an order of this court to permanently restrain the defendant by herself or her servants or agents from interfering with the plaintiffs peaceful enjoyment and possession of his registered parcel of land known as Kericho/Chemagel/1786 (*hereinafter referred to as the suit land*). The plaintiff further prayed to be awarded the costs of the suit.

The defendant filed a defence. She denied that the plaintiff was the registered owner of the suit land. She averred that the plaintiff was fraudulently registered as the owner of the suit land. She further stated that there was a dispute between the plaintiff and herself which was pending resolution by the tribunal before the District Officer, Sotik. She urged the court to dismiss the plaintiffs suit with costs.

The plaintiff listed this case for hearing on the 7th February, 2007. He served the hearing notice upon the defendant. The plaintiff filed an affidavit of service which confirmed that the defendant had been duly served. The defendant, who was acting in person, did not attend court on the said date that the case was scheduled to be heard. This court upon perusal of the said affidavit of service, was satisfied that the defendant was properly served with the hearing notice. The court allowed the plaintiff to proceed with his case, the absence of the defendant notwithstanding.

The plaintiff called one witness, himself. He testified that he purchased the suit land from the defendant in 1975. The defendant at first sold him four acres for a purchase consideration of Kshs. 24,000/=. Later, a son of the defendant called Jonathan Kipyegon Cheruiyot injured someone and was required to pay compensation. The defendant approached the plaintiff and thereafter agreed to sell him a further 1^{1/2} acres for a further consideration of Kshs 4,500/=. The total purchase consideration was Kshs. 29,500/=. The plaintiff recalled that after the said agreement, the defendant accompanied him to the Land Control Board at Kapkatet. The consent to subdivide the original parcel of land and to transfer the portion purchased by the plaintiff was granted by the said Land Control Board.

The plaintiff testified that the original parcel of land was registered as Kericho/Chemagel/604 in the name

of the defendant. The said parcel of land was subdivided into two parcels of land i.e Kericho/Chemagel/1786 and Kericho/Chemagel/1785. The parcel of land which had been sold and transferred to the plaintiff was registered as parcel No. Kericho/Chemagel/1786. The plaintiff produced a copy of the official search as *plaintiff's exhibit No.1*. He testified that he could not produce the title in respect of the suit land because the same was charged to a bank.

The plaintiff recalled that the dispute between him and the defendant over the suit parcel of land started sometimes in 1976 when the defendant appeared to have changed her mind after she had been incited by one Morogoch. The defendant indicated to the plaintiff that she desired to have the sale agreement in respect of the said parcel of land rescinded. The plaintiff was not agreeable to having the agreement rescinded. This is because the plaintiff had already paid the purchase consideration in full and had already taken occupation of the suit land. The defendant referred the dispute to the District Officer, Kapkatet, who referred the dispute to the police after the defendant had alleged that the plaintiff had committed fraud.

The plaintiff testified that after the police concluded the investigations, they established that the defendant had given false information to the police. The defendant was consequently charged for giving false information to the police and was convicted and fined Kshs. 500/= or in default thereof she was to serve three (3) months imprisonment. The plaintiff was unable to procure the proceedings of the said criminal case, but instead produced a duly certified copy of the court register as *plaintiff's exhibit No. 2*.

The plaintiff testified that inspite of the fact that he has been registered as the lawful owner of the suit land, the defendant and her grandsons have persisted in harassing him and disturbing his peaceful enjoyment of the suit land. The plaintiff therefore prayed for an order of this court to permanently restrain the defendant by herself or through her agents from interfering with his quiet possession and occupation of the suit land. He further prayed to be awarded costs of the suit.

I have carefully considered the evidence adduced by the plaintiff in this case. I have also read the pleadings filed by the parties to this suit. The issue for determination by this court is whether the plaintiff has established that he is the lawful owner of the suit land and is therefore entitled to the order of permanent injunction sought. The plaintiff has established to the required standard of proof on a balance of probabilities that he is the registered owner of all that parcel of land known as Kericho/Chemagel/1786. The said parcel of land measures 1.78 hectares. According to the certificate of search which was produced as *plaintiff's exhibit No. 1*, the plaintiff was so registered on the 13th May, 1980.

The plaintiff was registered as the owner of the said parcel of land under the Registered Land Act (cap 300) Laws of Kenya

It is more than 26 years ago. During this entire period, no one had challenged in court, the plaintiff's ownership of the said suit land. According to Section 27 and 28 of the Registered Land Act, a person who is so registered is the only one who is recognized in law as the owner of the said parcel of land unless it can be established that he fraudulently obtained registration of the said parcel of land (*see* Section 143 of the Registered Land Act). As a registered owner, the plaintiff is entitled to all the rights and privileges that are appurtenant to the ownership of land. That right includes not being disturbed or having his peaceful occupation and the enjoyment of the suit land interfered with.

The testimony offered by the plaintiff in this suit was uncontroverted. His evidence was unchallenged. This court will grant the prayers sought by the plaintiff in his plaint. The defendant, by herself, her servants and/or agents or any person claiming under them, are hereby restrained by means of a permanent injunction from trespassing into or interfering with the plaintiffs peaceful enjoyment and occupation of all that parcel of land known as Kericho/Chemagel/1786 registered in the name of the plaintiff.

The plaintiff shall have the costs of the suit.

DATED at Kericho this 23rd day of March, 2007

L. KIMARU

JUDGE