



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 704 OF 2017**

**JULIUS KAMAU KARANJA.....PLAINTIFF**

**VERSUS**

**ELVIS MELITA SUYIANKA.....1<sup>ST</sup> DEFENDANT**

**CATHERINE MUTWA.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

By a Plaint dated the 9<sup>th</sup> May, 2017, the Plaintiff prays for judgement against the Defendants for:

- a) A declaration that the Plaintiff is the genuine owner of Plot No. 3009 /RESIDENTIAL – NOONKOPIR TRADING CENTRE of which he has always paid all the land rates and rents as the law requires.
- b) A declaration that any other person working in the plot or claiming ownership therein is trespassing and should be evicted.
- c) An order of demolition of the unlawful structure now being constructed on the plot names in (a) above.
- d) Any other orders the Honourable Court may deem fair and just.
- e) Costs of this suit.

The Defendants despite having been duly served failed to enter appearance nor file their Defences. On 27<sup>th</sup> November, 2017, an interlocutory judgement was entered as against the Defendants and the matter then proceeded for hearing where the Plaintiff called one witness.

**Evidence of the Plaintiff**

The Plaintiff as PW1 adopted his witness statement and stated that he purchased plot No. 3009/ Residential – Noonkopir Trading Centre, at Kshs. 400,000/= from the 1<sup>st</sup> Defendant vide an Agreement dated the 9<sup>th</sup> January, 2012. It was his testimony that they entered into a Sale Agreement which was witnessed by several people including his wife. He confirmed that the whole of the purchase price was paid on the same day. He explained that the suit plot was then transferred to his name by the OI Kejuado County Council. Further, that he paid rent and rates plus transfer fees owing on the plot. He contended that he also paid the Clearance Certificate fees and his name was entered as the Plot Owner. Since then he has been paying the rates as required. He testified that in March 2017, he was informed by his caretaker John Wamulanda that the 1<sup>st</sup> Defendant showed somebody the suit plot and instructed him to take possession. Further, that the person commenced construction of a building almost covering the whole plot. He contended that he visited the suit plot, found a group of workers constructing thereon and reported the matter to the police who visited the site and stopped further construction. He explained that the construction has continued despite his efforts to stop the workers verbally from doing so. He produced the Sale Agreement dated the 9<sup>th</sup> January, 2012; Letter of Allotment; Certificate of Official Search dated 25<sup>th</sup> July, 2016; Rate Clearance Certificate dated the 10<sup>th</sup> January, 2012; Transfer of Plot dated 5<sup>th</sup> January, 2012; and Receipts of Payment of Land Rates and Rent as his exhibits.

The Plaintiff closed his case and filed written submissions.

**Analysis and Determination**

Upon consideration of the Plaint, testimony of the Witness, exhibits and submissions the following are the issues for determination:

- **Whether the Plaintiff is the proprietor of Plot No. 3009 /Residential – Noonkopir Trading Centre**
- **Whether the Defendants have trespassed on Plot No. 3009 /Residential – Noonkopir Trading Centre**
- **Whether the Plaintiff is entitled to the Orders sought in the Plaintiff**

As to whether the Plaintiff is the proprietor of Plot No. 3009 /Residential – Noonkopir Trading Centre

In his submissions, the Plaintiff reiterated his claim and urged the court to enter judgement in his favour and grant the reliefs sought in the Plaintiff. He contended that he had established a prima facie case and relied on the documents he had produced as exhibits as well as the case of **ELC Case No. 171 of 2014 eKLR**. On the issue whether the Plaintiff is the registered proprietor of the suit plot, he tendered the following documents to prove ownership: Sale Agreement dated the 9<sup>th</sup> January, 2012; Letter of Allotment; Certificate of Official Search dated 25<sup>th</sup> July, 2016; Rate Clearance Certificate dated the 10<sup>th</sup> January, 2012; Transfer of Plot dated 5<sup>th</sup> January, 2012; and Receipts of Payment of Land Rates and Rent. The Defendants did not challenge this piece of evidence nor produce any evidence of ownership over the suit plot. I wish to make reference to section 24 (a) of the Land Registration Act which provides thus:

***“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.”***

Further, section 7(a) of the Land Act provides that Land may be acquired through allocation.

In the case of **Ahmed Ibrahim Suleiman and Another vs. Noor Khamisi Surur (2013) eKLR** Justice J.M. Mutungi stated that

***“the Plaintiff having been registered as proprietor and having been issued with a certificate of lease over title No/ Nairobi/Block 61/69 are in terms of section 26(1) of the Land Registration Act entitled to the protection of the law”.***

Further in the case of **WILLY KIPSONGOK MOROGO v ALBERT K. MOROGO (2017) eKLR** the Court held as follows:

***“ the evidence on record shows that the suit parcel of land is registered in the names of the Plaintiff and therefore is entitled to the protection under sections 24, 25 and 26 of the Land Registration Act.”***

Based on my analysis above, I find that the Plaintiff’s Letter of Allotment remains undisputed. Further, the Defendants have not indicated whether the same was obtained through fraud, misrepresentation or through a corrupt scheme. I find that the Letter of Allotment, Transfer as well as Certificate of Official Search tendered as evidence is conclusive and prima facie evidence that the Plaintiff is indeed the registered and absolute proprietor of Plot No. 3009 /Residential – Noonkopir Trading Centre, with vested rights and interests therein and the Defendants should hence refrain from interfering with the same. In associating myself with the two decisions cited above, as well as the evidence before me, I find that the Plaintiff is indeed entitled to protection of the law in accordance with the provisions of section 24, 25 and 26 of the Land Registration Act.

As to whether the Defendants have trespassed Plot No. 3009 /Residential – Noonkopir Trading Centre

The Plaintiff’s contention is that the 1<sup>st</sup> Defendant who sold him the suit plot has illegally and unlawfully given it to the 2<sup>nd</sup> Defendant who has entered thereon and erected a house on it. PW1 confirmed that he reported the matter to the Police who directed the Defendants to cease constructing on the suit plot but they have continued to do so.

In relying on the evidence before me which was not controverted, I find that the Defendants have indeed trespassed on the suit plot and interfered with the Plaintiff’s use including occupation by developing as well as constructing structures thereon.

As to whether the Plaintiff is entitled to the Orders sought in the Plaintiff. The Plaintiff sought for orders of eviction and demolition of the structures on the suit plot. Based on my findings above, I find that the Defendants have indeed interfered with the Plaintiff’s ownership of the suit plot and should hence be restrained from doing so. Further, the Defendants should remove the illegal structures they have constructed on the Plaintiff’s plot failure of which eviction should be undertaken once ample notice is issued.

On who should bear the costs of the suit, since the Plaintiff is the inconvenienced party, I will award him the costs of the suit.

It is against the foregoing that I find that the Plaintiff has proved his case on a balance of probability and will proceed to enter judgement in his favour as against the Defendants and make the following final orders:

- a) The Plaintiff be and is hereby declared the absolute proprietor of Plot No. 3009 /RESIDENTIAL – NOONKOPIR TRADING CENTRE.**
- b) A declaration be and is hereby issued that the Defendants and any other person working on Plot No. 3009 /RESIDENTIAL – NOONKOPIR TRADING CENTRE or claiming ownership is trespassing thereon and should be evicted.**
- c) An order be and is hereby issued that the Defendants are directed to demolish the structures constructed on Plot No. 3009 /RESIDENTIAL – NOONKOPIR TRADING CENTRE at their own costs after being issued with a ninety (90) days’**

notice failure of which the Plaintiff shall proceed to undertake demolition of the unlawful structure constructed on the said plot.

d) The costs of the suit is awarded to the Plaintiff.

Dated Signed and Delivered Virtually at Kajiado this 21<sup>st</sup> Day of January, 2021.

**CHRISTINE OCHIENG**

**JUDGE**