



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO 687 OF 2017**

**ENG. ISAAC GATHUNGU WANJOHI.....PLAINTIFF**

**VERSUS**

**MOSES KIRUTI LEMPASO.....1<sup>ST</sup> DEFENDANT**

**GRACE WAITHIRA.....2<sup>ND</sup> DEFENDANT**

**NIXON KIRUTI.....3<sup>RD</sup> DEFENDANT**

**JUDGEMENT**

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

- a) A Mandatory injunction restraining the Defendants, their agents, servants and employer or anyone claiming under them from trespassing and/ or interfering in any way with the property known as LR KAJIADO/ KITENGELA/ 27302 situate at Kitengela, Kajiado County.
- b) Costs of this suit.
- c) Interest on (b) above.
- d) Any further relief that this Honourable Court may deem fit to grant.

The Defendants were duly served as indicated in the affidavit of service of GEORGE OKWEMBA which was sworn on 30<sup>th</sup> May, 2017 and filed on 31<sup>st</sup> May, 2017 but they failed to enter appearance nor file their Defences. The Plaintiff proceeded to obtain an interlocutory judgement on 3<sup>rd</sup> October, 2017 and the matter proceeded for hearing on 23<sup>rd</sup> October, 2019.

**Evidence of the Plaintiff**

The Plaintiff as PW1 testified that in December, 2012 he came across an advertisement in the Daily Nation Newspaper advertising for sale property known as KAJIADO/ KITENGELA/ 27302 hereinafter referred to as the 'suit land'. He claims to have attended an auction on 21<sup>st</sup> December, 2012 at the GARAM INVESTMENTS offices. Further, as per the advertisement it indicated the suit land belonged to OLE KASASI LIMITED who has charged it to CONSOLIDATED BANK OF KENYA. It was his testimony that he was declared the highest bidder after bidding Kshs. 11, 500,000/=. Further, that he immediately paid Kshs. 2, 875, 000/= which was the 25% purchase price and thereafter he executed a Memorandum of Sale. He testified that he completed the payment of the balance to the CONSOLIDATED BANK OF KENYA whose representatives executed relevant Completion Documents in his favour. He confirmed that he was issued with his Certificate of Title in respect to the suit land on 28<sup>th</sup> August, 2015. He explained that on 15<sup>th</sup> December, 2015, he applied for consent for subdivision of the suit which was granted on 16<sup>th</sup> December, 2015. Further, in October, 2016 he visited the suit land with his agent Mr. Rugiri but they were confronted by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who claimed the suit land belonged to them together with the 1<sup>st</sup> Defendant. He testified that in November, 2016 he engaged a Surveyor Mr. D. Muniyao who together with his staff visited the suit land on 8<sup>th</sup> November, 2016 for purposes of subdivision but they were confronted and attacked by goons led by the 3<sup>rd</sup> Defendant, which matter was reported to the TUALA POLICE POST. PW1 reiterated that he has reported matter to the area chief but summons upon the Defendants have gone unheeded.

The Plaintiff produced the following documents as his exhibits: Advertisement dated 21<sup>st</sup> December, 2012; Receipt No. 1274 dated 21<sup>st</sup>

December, 2012 for payment of Kshs. 125, 000/=; Receipt No. 1275 dated 21<sup>st</sup> December, 2012 of Kshs. 2,750,000/= being 25% payment; Certificate of Title for Kajiado/ Kitengela/ 27302; Memorandum of Sale Dated the 21<sup>st</sup> December, 2012; Letter of Consent dated the 7<sup>th</sup> May, 2016; Application for Consent; Transfer by Chargee; Application to the Isinya Land Control Board for Subdivision; Letter of Consent for Subdivision from Isinya Land Control Board dated the 16<sup>th</sup> December, 2015.

The Plaintiff thereafter filed his written submissions.

### **Analysis and Determination**

Upon consideration of the Plaintiff, Witness Testimony, Exhibits and Submissions presented in respect of the suit herein, the following are the issues for determination:

- Whether a Mandatory Injunction should issue restraining the Defendants, their agents or anyone claiming under them from interfering with land parcel number LR KAJIADO/ KITENGELA/ 27302.
- Who should bear the costs of the suit.

As to whether a Mandatory Injunction should issue restraining the Defendants, their agents or anyone claim under them from interfering with land parcel number LR KAJIADO/ KITENGELA/ 27302. The Plaintiff in his submissions reiterated his claim and stated that he is the prima facie, absolute and indefeasible owner of the suit land. He contended that he is entitled to protection of the law. Further, that the Defendants had trespassed on his land and he was hence entitled to orders of injunction. To buttress his averments, he relied on the decision of **David Peterson Kiengo & 2 Others Vs Kariuki Thuo, Machakos HCCC No. 180 of 2011 and Principles of Injunctions by Richard Kuloba Oxford Press 1987.**

The Plaintiff tendered evidence to prove he purchased the suit land for Kshs. 11, 500, 000/= through a public auction, which monies he paid in full. He was thereafter registered as proprietor of the suit land after the Chargee executed all the requisite documents. Further, that he was issued with his Certificate of Title on 28<sup>th</sup> August, 2015 which he produced as an exhibit. From his testimony, the suit land was initially owned by Ole Kasasi Limited but the Defendants claim to own it and have blocked him from accessing as well as subdividing the same. Further, his agents were assaulted and he reported the matter to Tuala Police Post but no action was taken against the Defendants. From a perusal of the documents produced by the Plaintiff as his exhibits, it is quite evident that he adhered to the proper legal process to acquire the suit land. Further, there is no indication that the Defendants owned the land at the point of the auction. I wish to make reference to section 26(1) of the Land Registration Act which provides as follows”

**‘The Certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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. ’**

Section 24 (a) of the Land Registration Act further 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.....’**

In the case of **DAVID PETERSON KIENGO & 2 OTHERS V KARIUKI THUO[2012] eKLR** it was observed that: **‘ indefeasibility of title is the basis for land registration. The State maintains a central register of land title holdings which is deemed to accurately reflect the current facts about title. The whole idea is to make it unnecessary for a party seeking to acquire interests in land to go beyond the register to establish ownership. The person whose name is recorded on the register holds guaranteed title to the property. Since the State guarantees the accuracy of the register, it makes it unnecessary for a person to investigate the history of past dealing with the land in question before acquiring an interest.’**

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.’**

From the legal provisions cited above, I hold that since the Plaintiff is the absolute proprietor of the suit land, he is entitled to all rights and privileges belonging or appurtenant thereto and hence entitled to protection of the law as envisaged in sections 24, 25 and 26 of the Land Registration Act.

From my findings above, I note that the Defendants never controverted the Plaintiff’s averments. It is my considered view that since the Plaintiff is the legal owner of the suit land which the Defendants are trespassing upon and blocking him from accessing, a mandatory injunction should hence issue to restrain the Defendants from doing so.

Who should bear the costs of the suit.

Since the Plaintiff has been inconvenienced with the Defendants’ acts of restraining him from accessing the suit land, I find that he is entitled to costs.

It is against the foregoing that I find that the Plaintiff has proved his case on a balance of probability and will proceed to make the following orders:

a) A Mandatory injunction be and is hereby issued restraining the Defendants, their agents, servants and employee or anyone claiming under them from trespassing and/ or interfering in any way with the property known as LR KAJIADO/ KITENGELA/ 27302 situate at Kitengela, Kajiado County.

b) The Costs of the suit is awarded to the Plaintiff

**Dated signed and delivered Virtually at Kajiado this 8<sup>th</sup> day of February, 2021.**

**CHRISTINE OCHIENG**

**JUDGE**