



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC CASE NO. 224 OF 2015**

**JOSEPH BLAME AMUYE MUMBU.....PLAINTIFF**

**VERSUS**

**JAMES MALEMBA ANZETSE.....DEFENDANT**

**JUDGEMENT**

The plaintiff avers that he is a registered owner of a parcel of land known as L.R. NO. S/WANGA/MUSANDA/1553 measuring 0.8HA. Which land he acquired vide a private treaty. At the time of purchase the vendor had planted an assortment of food crops on the land and the plaintiff was to take vacant possession upon the said crops. The plaintiff avers that upon harvest the defendant unlawfully and without any colour of rights entered in the plaintiff's land willfully and maliciously destroying the crops and trees. The defendant's atrocities were initiated at the beginning of the year 2015 and continues to the plaintiff's detriment. The defendant's unlawful actions have and continue to deny the plaintiff his unfettered rights to his land to which he is the lawful registered owner. The plaintiff has and continues to suffer damage and accordingly claims for compensation against the defendant for malicious damages to his trees and mesne profits. Particulars of damages are that, Ksh. 96,332/= value of felled trees and Ksh. 4,500/= cost of valuation report. The plaintiff further claims for a permanent injunction against the defendant his agent or anybody acting through and on the defendant's behalf from trespassing, tilling, interfering, disposing, letting, leasing S/WANGA/MUSANDA/1553. There exists another case in Mumias Senior Principal Magistrate's Court where the defendant was charged with malicious damage to property which case is still in court. The plaintiff prays for judgment against the defendant for:-

- (a) An order for a permanent injunction restrains the defendant, his agents, or any person or being acting on behalf or through him from trespassing, setting foot, tilling, disposing, letting, leasing, interfering and/or in whatsoever manner dealing in and/or with land parcel numbers S/WANGA/MUSANDA/1553.
- (b) Ksh. 101,132/=.
- (c) Mesne profit for unlawful use of land parcel numbers S/WANGA/MUSANDA/1553 from January, 2015 upto the cessation of such unlawful use.

PW1 the plaintiff produced the sale agreement, police abstract, copy of the title deed, letter from CID, report from forestry department and receipt as PEx 1 to 5. PW2 confirms that her father sold the suit land to the plaintiff and that the defendant was her step brother.

This court has carefully considered the evidence and submissions therein. The defendant was served but failed to attend court or file any defence. This matter proceeded ex parte. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

*“Subject to this Act, 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.”*

Section 26 (1) of the Land Registration Act states as follows:

*“The 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 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.”*

The law is clear that, the 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 and indefeasible owner and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

This court in considering this matter referred to the case of Elijah Makeri Nyangw'ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. THE Judge in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

*“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”*

It is a finding of fact the plaintiff is the absolute registered proprietor of all that parcel of land L.R. NO. S/WANGA/MUSANDA/1553 measuring 0.8HA. It is the plaintiff's testimony that he purchased the land on the 6<sup>th</sup> November 2013 for Kshs 320,000/=. At the time of purchase the vendor had planted an assortment of food crops on the land and the plaintiff was to take vacant possession upon the said crops being harvested. The plaintiff avers that the defendant unlawfully and what any colour of rights entered in the plaintiffs land willfully and maliciously destroying trees and cutting the same. PW2 corroborated the plaintiff's evidence, she confirms that her father sold the suit land to the plaintiff and that the defendant was her step brother. The defendant offered no evidence and the plaintiff's case remains unchallenged. I find that the defendant maliciously damaged the plaintiff's trees and he is entitled to damages. Particulars of damages are Ksh. 96,332/= value of cut trees and Ksh. 4,500/= cost of valuation report have been specifically proved with documentary evidence. The claim of mesne profits was not proved and will not be awarded. I find that the plaintiff has established his case on a balance of probabilities and I grant the following orders;

1. An order for a permanent injunction restraining the defendant, his agents, or any person or being acting on behalf or through him from trespassing, setting foot, tilling, disposing, letting, leasing, interfering and/or in whatsoever manner dealing in and/or with land parcel numbers S/WANGA/MUSANDA/1553.
2. Ksh. 101,132/= general damages.
3. Costs to the plaintiff.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 2<sup>ND</sup> JULY 2019.**

**N.A. MATHEKA**

**JUDGE**