



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 486 OF 2017

(Formerly Machakos ELC Case No. 157 of 2016)

PARAMJIT SINGH SOKHI.....PLAINTIFF

VERSUS

LORNAH INGETINA CHARLES.....DEFENDANT

JUDGMENT

By a Plaint dated the 18th October, 2016, the Plaintiff prays for judgment against the Defendant for:

- a) A declaration that the Plaintiff is the rightful owner of Title No. Kajiado/ Kaputiei North/ 277 and the Defendant has trespassed onto the same.
- b) A mandatory order directing the Defendant by herself, her agents and/or servants to unconditionally demolish all structures put up on the property known as Title No. Kajiado/ Kaputiei North/ 277 and further vacate and hand over vacant possession of the suit property to the Plaintiff from the date of judgment and/or within such a reasonable period as this Honourable Court may deem fit.
- c) In default of the defendant demolishing the said structures and /or vacating the suit property title No. Kajiado/ Kaputiei North/ 277 as per (b) above, the Plaintiff be at liberty to demolish the said structures at the Defendant's cost and to further evict the defendant using all reasonable force from the suit property.
- d) The OCS Kitengela Police Station and/or any other appropriate person(s) within the Police Force do supervise and provide security to facilitate the demolition and/or eviction for purposes of maintaining law and order.
- e) General damages for unlawful occupation.
- f) Any other or further relief that this Honourable Court may deem just to grant.

The Defendant filed a Statement of Defence where she denied the averments in the Plaint and contended that she had jointly purchased the suit land with her husband in 1994. Further, that she had resided thereon from 1994 to date. She claimed the husband shared the same names with the Plaintiff and insists it is the Plaintiff who fraudulently got registered as the owner of the suit land.

Evidence of the Plaintiff

The Plaintiff as PW1 claims to be the registered owner of land parcel number Kajiado/ Kaputiei North/ 277 hereinafter referred to as the suit land which he purchased in 1994. He testified that he met the Defendant when he went to report to the Kitengela Police on encroachment on his land. He testified that the Defendant had put up a mabati structure and rented to a church for KShs. 2500 per month from 2013/2014. It was his testimony that he used to visit the land on and off but in January 2012 he did visit the suit land when one of his neighbours a Mr. Waweru warned him that the said land was being used as a dumping site. Further, he visited the land with his staff, cleared it and put up a barbed wire fence around it. He testified that in 2015, Mr. Waweru informed him that someone was digging a pit on his land. He denied ever being married to the Defendant, living in Kitengela nor working at Portland Cement.

Evidence of the Defendant

The Defendant as DW1 claims she started residing on the suit land in 1992 together with her husband Paramjit Singh Sokhi. Further, that she stayed with her husband from 1992 up to 1998 when he left for India to visit his parents and never returned to date. It was her testimony that she has a school called Silver Valley Academy (now Cornerstone Academy) on the suit land since the year 2000. She confirmed not having a title to the suit land but explained that she gave the said title to a broker who promised to change the name but later told her the same was

lost. She testified that she has resided on the land for over 20 years but started having problems in 2013 when the Plaintiff claimed the land was his. She denied that the Plaintiff is her husband and insists she wants to have peaceful occupation of her land. She produced pictures, letter from Isinya Division Education Officer addressed to Silverstone Academy and Program dated 20th November, 2001 for the Closing Day at Silverstone Academy.

In cross-examination, DW1 confirmed that they were not formally married but were happy together as they never fought. Further, that she never met the husband's relatives and from 1998, he has never returned. She insisted they jointly purchased suit land for Kshs. 250,000/= in 1992 and she contributed between Kshs. 125,000/= to Kshs. 130,000/=. She however did not have a Sale Agreement nor photos they took together with her husband. She explained that it was her husband who processed the documents but did not know the vendor. It was her testimony that she met the Plaintiff at the DOs Office and he was not her husband.

DW2 confirmed that she met the Defendant in 1996 while staying with her Asian husband. Further, that she saw them staying together for about 10 years as they used to go to Athi River Church of God together with Defendant. She confirmed the school on suit land is called Cornerstone Academy. In cross examination, she reiterated that the Defendant and the husband stayed together for 10 years.

DW3 testified that they go to the same church with the Defendant. Further, that the Defendant resides on the land where there is a residential house including a school called Cornerstone Academy. It was her testimony that she started staying in Kitengela from 2001 and from that time the Defendant was residing on suit land. She clarified that she was not familiar with the Defendant's personal life and did not know if the Defendant has any issue with the suit land but confirmed that the Defendant was running a school.

Evidence of the Land Registrar, Kajiado

Mr. Paul Tonui the Land Registrar, Kajiado stated in Court that since the Land Records in respect to the suit land were missing, he proceeded to visit the site on 9th April, 2019 in the presence of Land Surveyor, Plaintiff, Area Chief as well as the neighbours whose land border suit land. He presented a report and concluded that suit land belonged to the Plaintiff Paramjit Singh Sokhi as this was supported by the Sale Agreement, Copy of Title Deed, and Correspondence from neighbours. He produced his report as an exhibit.

In cross examination he averred that he was not aware of any dispute in respect to the suit land as per the records. Further, that records as per Green Card are missing but other documents are available. These are Book Register; Consent as well as Previous Searches. He insisted that this did not raise any suspicion. He explained that at times records get misplaced during scanning or filing. He reiterated that there was no truth in the Defendant's allegations that records were tampered with. Further, that title for the Plaintiff was issued on 20th December, 1994. He clarified that it was possible for an agreement to be prepared four days before transfer. He confirmed that Consent of the Land Control Board was obtained as there was a fee for Consent paid on 20th December, 1994 with the amount for transfer. Further, stamp duty was paid on transfer of suit land. He stated that he did not have the ID and PIN of the Vendor as part of the records. He testified that the Defendant never attended the site visit although they sent her summons. Further, that the Area Chief called the Defendant in his presence. He did not have transfer documents in Court. It was his testimony that the original owner of the suit land was Kaputiei North Group Ranch and later the land was acquired by Embakasi Ranching that transferred to James Njenga Kamau who in turn transferred to the Plaintiff.

Both the Plaintiff and Defendant closed their cases and filed written submissions.

Analysis and Determination

Upon consideration of the pleadings filed herein including witnesses testimonies, exhibits and submissions, the following are the issues for consideration:

- Who is the owner of suit land.
- Whether the Defendant has acquired the suit land through adverse possession.
- Whether the Plaintiff is entitled to the orders sought in the Plaintiff.

The Plaintiff filed his written submissions and relied on section 24 (a) of the Land Registration Act to contend that he is the absolute proprietor of suit land. He further relied on the cases of **Ahmed Ibrahim Suleiman and Anor V Noor Khamis Surur (2013) eKLR** to support this argument. He further submitted that the Defendant failed to provide evidence to challenge the Plaintiff's identity and proof of her marriage to the alleged Asian man.

The Defendant in her submissions contended that the Plaintiff's claim was statute barred by virtue of section 38 of the Limitation of Actions Act. Further, that the Defendant had acquired the suit land by virtue of adverse possession. She relied on the cases of **Mtana Lewa V Kahindi Ngala Mwangandi (2005) eKLR; Adnam V Earl of Sandwich (1877) 2QB 485; Mweu V Kiu Ranching & Farming Cooperative Society Limited (1985) KLR 430** to buttress her arguments.

As to who is the registered proprietor of the suit land. The Plaintiff claims he is the registered proprietor of the suit land. The Defendant contends that she purchased the suit land jointly with her husband who shares the same name with the Plaintiff. The Plaintiff produced a copy of his title deed and Sale Agreement dated the 16th December, 1994 to prove ownership of the suit land. The Defendant never produced any documents of title to prove how they acquired the suit land with her husband. DW1 insisted that she had taken possession of the suit land and put up a school thereon. She produced two documents in respect to the school. On a keen perusal of the said documents, I note they do not indicate the year the school was established. DW2 in her evidence stated that she knew the Defendant in 1996 and she had been residing on the suit land with her Asian husband for over 10 years. This evidence is contradictory as the Defendant herself testified that

her Asian husband left the country in 1998 and has never returned. It is interesting to note that despite the Defendant claiming to have been married to the Asian who shares the same name with the Plaintiff, she never produced any photographs of the said husband and neither did she present a Marriage Certificate. She further claimed that she had given the documents of title to a broker who later told her the said documents disappeared but did not inform Court who sold them the land. The Land Registrar in his testimony interviewed neighbours and provided the history of ownership of the suit land. He confirmed that the Plaintiff was the owner of the suit land. Further in a letter dated the 27th December, 2011 from one PN Waweru who is owner of land parcel number 277 that neighbours suit land, he states that the suit land had been converted into a dumpsite and was requesting if the Plaintiff would allow him put up a temporary structure thereon. This is a pointer that as at 2011 December, there was actually no structure on the suit land as claimed by the Defendant. The said Paul Njoroge Waweru was actually interviewed by the Land Registrar and confirmed to him that he had actually written the letter dated 27th December, 2011.

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 **Ahmed Ibrahim Suleiman and Another vs. Noor Khamisi Surur (2013) eKLR** where 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** where 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.**'

In associating myself with the two decisions, the legal provisions cited above as well as the evidence before me which includes Copy of the Title Deed to the suit land, Copy of Certificate of Official Search dated the 17th July, 2014 and Sale Agreement dated 16th December, 1994 , I find that the Plaintiff is indeed the absolute proprietor of land parcel number Kajiado/ Kitengela/ 277 and hence entitled to protection of the land in accordance with the provisions of section 24, 25 and 26 of the Land Registration Act.

As to whether the Defendant has acquired the land through adverse possession. The Defendant in her Defence claimed to been on the suit land from 1994 when they purchased it todate. Further that she established a school called Silver Valley Academy (now Cornerstone Academy) on the suit land since the year 2000. She testified that she has resided on the land for over 20 years but started having problems in 2013 when the Plaintiff claimed the land was his. She produced pictures, letter from Isinya Division Education Officer addressed to Silverstone Academy and Program dated 20th November, 2001 for the Closing Day at Silverstone Academy. The Plaintiff insists the Defendant has trespassed on his land and he reported the matter to the Kitengela Police Station vide OB No. 35/27/1/2015. The Defendant admits meeting the Plaintiff when they appeared before the Provincial Administration concerning the dispute herein. I note the Defendant was claiming ownership of the land contending that they had jointly purchased the same with her husband who shares the same name with the Plaintiff but also claimed adverse possession.

Adverse possession is governed by Section 38 (1) and (2) Limitation of the Actions Act that provides as follows:

(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in [section 37](#) of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.

(2) An order made under subsection (1) of this section shall on registration take effect subject to any entry on the register which has not been extinguished under this Act.

For adverse possession, to mature into title, the person claiming the same should have been in Continuous and uninterrupted possession without the consent of the owner of the land; his interest should be inconsistent to the interests of the true owner of the land; the possession should be Actual, Exclusive, Open and notorious,

From the evidence tendered by the Defendant, she did not produce any documents to confirm that the school was established in the year 2000. As per the letter dated the 27th November, 2011 from the owner of land parcel number, Kajiado/ Kitengela/ 277, it emerged that in 2011 the suit land was being used as a dumpsite and to my mind, the school could not have been running on a dumpsite as purported by the Defendant. The burden of proof was upon the Defendant to prove when she indeed entered the suit land which to me she has failed to discharge to enable the Court determine when time begun to run.

In the case of **Wines & Spirits Kenya Limited & another v George Mwachiru Mwango [2018] eKLR**, the Court of Appeal held that: '**The law is clear on when time starts running for purposes of adverse possession. The possession or occupation must be with the knowledge of the registered owner (See Kimani Ruchine & Another vs. Swift Rutherford & Co. Ltd (1980) supra. Time cannot therefore start running until the registered owner becomes aware that there is a trespasser occupying his/her property and does nothing to assert his rights on the property for at least 12 years. That being so, time in this case only started running in 2012. Immediately thereafter, the appellants had the respondent evicted from the suit premises. Even as at the time they filed their claim before the High Court, they had already been evicted. It was evident therefore that the respondent was not in actual possession for over 12 years as alleged.**'

Further, in the case of **KAMAU MUCHUA Vs RIPPLES LIMITED CA CIVIL APPEAL NO. 106 of 1992**, the Court of Appeal states as follows: '**A party as far as possible ought not to be allowed to retain a position of advantage that it obtained through a planned and blatant unlawful act.**'

In associating myself with the two decisions and based on the evidence before me, I find that the Defendant has not proved her claim for adverse possession over the suit land and it seems she only wanted to retain a position of advantage as against the Plaintiff after she entered his land

As to whether the Plaintiff is entitled to the orders sought in the Plaint. The Plaintiff sought for a declaration that the Plaintiff is the rightful owner of Title No. Kajiado/ Kaputiei North/ 277; mandatory order directing the Defendant by herself, her agents and/or servants to unconditionally demolish all structures put up on the property known as Title No. Kajiado/ Kaputiei North/ 277; vacant possession; OCS Kitengela Police Station and/or any other appropriate person(s) within the Police Force do supervise and provide security to facilitate the demolition and/or eviction for purposes of maintaining law and order; and General damages for unlawful occupation. From the evidence in court, it emerged that the Defendant has entered the suit land, put up a school and was leasing the same to a church. Since I have already held that the Plaintiff is the absolute proprietor of the suit and the Defendant is not entitled to the same through adverse possession, I find that the Plaintiff is indeed entitled to the orders sought in the Plaint. In terms of general damages, the Plaintiff pleaded that the Defendant had trespassed on his in 2014, constructed temporary structures thereon and refused to vacate despite several requests from him. Further, that the Defendant's actions were total abuse over his right to property and he has suffered great loss in the form of denial of right of entry and or usage. A cursory look at the pictures presented by both parties as evidence, it is clear the structures on the suit land are indeed temporary. Based on my analysis above, I find that indeed the Defendant's action of trespassing on the suit land has interfered with the Plaintiff's rights to occupation and enjoyment of his property. PW1 however did not adduce evidence on the losses he had had incurred as a result of the Defendant's acts of trespass.

In associating myself with the case of **Duncan Nderitu Ndegwa v. KP& LC Limited & Another (2013) eKLR** where **P. Nyamweya J.** held:-

“...once a trespass to land is established it is actionable *per se*, and indeed no proof of damage is necessary for the court to award general damages. This court accordingly awards an amount of Kshs 100,000/= as compensation of the infringement of the Plaintiff's right to use and enjoy the suit property occasioned by the 1st and 2nd Defendants' trespass”,

I find that the Plaintiff indeed suffered damages as a result of the Defendant's acts of trespass and will proceed to award him a nominal amount of Kshs.200,000 as general damages.

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 for him as against the Defendant. I will further proceed to make the following final orders:

- i) A declaration be and is hereby issued that the Plaintiff is the rightful owner of Title No. Kajiado/ Kaputiei North/ 277 and the Defendant has trespassed onto the same.
- ii) A mandatory order be and is hereby issued directing the Defendant by herself, her agents and/or servants to unconditionally demolish all structures put up on the property known as Title No. Kajiado/ Kaputiei North/ 277 and further vacate as well as hand over vacant possession of the suit property to the Plaintiff within ninety (90) days from the date hereof.
- iii) In default of the defendant demolishing the said structures and /or vacating the suit property title No. Kajiado/ Kaputiei North/ 277 as per (b) above, the Plaintiff be at liberty to demolish the said structures at the Defendant's cost and to further evict the defendant using all reasonable force from the suit property after Ninety (90) days from the date hereof.
- iv) The OCS Kitengela Police Station and/or any other appropriate person(s) within the Police Force do supervise and provide security to facilitate the demolition and/or eviction for purposes of maintaining law and order.
- v) General damages for trespass amounting to kshs. 200,000/=
- vi) The costs of the suit is awarded to the Plaintiff

Dated signed and delivered in open court at Kajiado this 28th day of January, 2020.

CHRISTINE OCHIENG

JUDGE