



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

E.L.C NO. 5 OF 2019 (O.S)

MARTHA CHEPKOECH.....PLAINTIFF

VERSUS

LEONARD CHEPKWONY.....DEFENDANT

JUDGEMENT

1. By a Plaintiff dated 24th January, 2019 and filed on 30th January, 2019, the Plaintiff –**MARTHA CHEPKOECH** – complains that the Defendant – **LEONARD CHEPKWONY** – illegally entered her land sometimes in September, 2018 and after so doing embarked on cutting down trees thus occasioning her loss and damage. The Plaintiff pleaded that the Defendant has threatened her with physical violence in order to intimidate her into accepting his occupation and use of her portion of land in Land parcel No KERICHO/KAPSUSER/38 (which is also “suit land” hereafter).

2. The Plaintiff wants the following orders:

(a) A declaration that the Defendant is a trespasser on L.R KERICHO/KAPSUSER/38.

(b) A permanent injunction to issue to restrain the Defendant by himself, his agents or servants from entering and/or remaining on L.R NO KERICHO/KAPSUSER/38 and to restrain him from interfering with the Plaintiff’s quiet possession of the said land.

(c) Costs of the suit.

(d) Such other relief as the court may deem fit or just to grant.

3. Records show that the Defendant was served. Despite the service however, the Defendant never entered appearance, file a defence, or appear in court. A process server called **VINCENT C. LELGO** is shown to have served the Defendant on 15th February, 2019 at Kapsuser village next or near Cheswerta KTDA Tea Buying Centre in presence of one Isaiah.

4. The court heard this matter on 17th February, 2020 and three witnesses, who included the Plaintiff, testified. They all explained that the Defendant and his younger brother are persons that the Plaintiff, who is childless, had considered adopting as her children in the past. She even temporarily stayed with them but got fed up with them when she learned that they planned to poison her. She was generally not pleased with their character also. The Defendant was said to have been an adult by then and therefore not eligible for legal adoption as a child. The Plaintiff however was ready to adopt them under Kipsigis customs but their bad character and sinister plan to poison her made her have a change of heart and mind. A clan meeting was called which resolved that the two go away, which they did. But the Defendant returned in the year 2018 and started engaging in the things now being complained of. All this emerges from the evidence of PW1, PW2 and PW3, the only witnesses who testified.

5. In the course of hearing, the following exhibits were produced:

(1) A copy of search showing that the suit land is registered in the name of the Plaintiff’s late father – KIPKOSKEI KITUGENY. (PEX NO 1)

(2) A grant of letter of administration intestate showing the Plaintiff as one of the legal representatives of her late father’s estates (PEX NO 2)

(3) Certificate of Confirmation of Grant (PEX NO 3)

(4) Demand notice dated 13/12/2018 sent to the Defendant by the Plaintiff’s Counsel (PEX NO 4)

6. The Plaintiff filed written submissions on 18th February, 2020. She reiterated the substance of the evidence and ultimately opined that “*the Defendant has no bonafide interest in the suit property but is a mere trespasser seeking to exact a land grab.*” For persuasion and guidance, he also availed the decided case of **Ochako Obinchu Vs Zachary Oyoti Nyamoyo (2018) eklr**, which I have assiduously read.

7. The Plaintiff’s evidence is without a challenge. And the narrative given by all the three witnesses is consistent and cogent. It is not clear why the Defendant is doing what is complained of yet there is evidently no blood relation between him and the Plaintiff and the adoption that would have created a legal tie to her was a complete flop. This seems to me to be a case of the strong (Defendant) trying to trample underfoot the rights of the weak (Plaintiff). The law abhors a scenario like that one.

8. Given that the Plaintiff’s pleadings are not controverted, and further given that the evidence given is without a rebuttal, my considered view is that the Plaintiff has demonstrated the merits of her case well. This view is further reinforced by the substance of the submissions that were filed. I therefore make a finding that the Plaintiff’s case is well proved on a balance of probabilities. I grant her prayers (a), (b) and (c) in the Plaint.

Dated, signed and delivered at Kericho this 27th day of February, 2020.

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A. K. KANIARU

JUDGE