



**REPUBLIC OF KENYA**

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

**AT ELDORET**

**ELC CASE NO.54 OF 2013**

**GRACE CHEROTICH KEMBOI**

**(Suing through her duly appointed**

**Attorney Elijah Kipruto Rono).....PLAINTIFF**

**VERSUS**

**SIMON KIPKOECH NGOTWA.....DEFENDANT**

**JUDGMENT**

By an amended plaint dated 21<sup>st</sup> June 2013 the plaintiff herein sued the defendant seeking for the following orders:

- a) A declaration that the acts of the defendant in trespassing into land parcel known as ELDORET MUNICIPALITY/BLOCK 9/1322 are unlawful coupled with an order of perpetual injunction restraining the defendant from further constructing, trespassing or proceeding to assume occupation, charge or transfer or sell the said land parcel.
- b) An order of eviction of the defendant himself, his servants, agents from the land parcel known as ELDORET MUNICIPALITY/BLOCK 9/1322 together with the removal and demolition of structures.
- c) Costs and interest.

The defendant had sued the plaintiff in Eldoret E & L case No. 344 of 2013 and the two suits were consolidated on 19<sup>th</sup> September 2013.

**PLAINTIFF'S CASE**

Elijah Kipruto Rono(PW1) testified and stated that the plaintiff is his cousin who gave him a power of attorney dated 7<sup>th</sup> February 2013 which was registered at the lands office. He stated that the land belonged to the plaintiff and produced a certificate of lease and search certificate as Pex no. 2 and 3.

It was his evidence that on 7<sup>th</sup> February 2013 he found someone putting up a structure on the said parcel of land and produced photographs as Pex no. 4a & b which showed construction was underway. The defendant did not show him any document regarding the land and the plaintiff has been paying rates.

PW2 Aresso Omollo Advocate testified that he came to represent Mr. Gicheru who prepared the lease title. He stated that the lease was registered on 30<sup>th</sup> March,2012 and entered as No.4742012 on the presentation book. A fee of Ksh 2100 was paid and that the lease was signed by I.M Chepkwesi the Land Registrar. It was his evidence that the defunct Municipal Council had instructed them to prepare the lease document.

The plaintiff therefore closed his case and urged the court to close the defence case as both the defendant and his Counsel were not present.

**PLAINTIFF'S SUBMISSIONS**

Counsel submitted that the plaintiff had proved she was the absolute proprietor of the leasehold interest by production of the original certificate of lease, the rates payment request. Counsel relied on Section 24 of the Land Registration Act that gives the plaintiff all the

rights as a registered leaseholder and section 25(1)(b) on acquisition of land whether it's a first registration or not for valuable consideration or by an order of the court, cannot be defeated once registered. Counsel urged the court to grant the orders as prayed in the plaint.

### **ANALYSIS AND DETERMINATION**

This is a case where two suits were consolidated and the parties were given an opportunity to present their case but the defendant did not appear even though he had an advocate on record. The case is therefore undefended. The issues for determination in this case are as to whether the plaintiff is the absolute owner of the suit land and whether the plaintiff is entitled to the orders sought.

The parties herein have come to court alleging that they are the legal absolute lease holders of parcel number Eldoret/Municipality/Block 9/1322. The court had granted interim orders and parties were to maintain status quo.

The plaintiff through a power of attorney registered at the Lands office produced an original certificate of lease which indicates Grace Cherotich Kemboi as the owner. The same was registered on 3<sup>rd</sup> April 2012. The lessor is Eldoret Municipal Council and the term of lease is for a period of 99 years starting from the 1<sup>st</sup> May 1982. The land measures 0.0294 Ha. The law applicable then was RLA.

Section 32 of the Registered Land Act (repealed) provides as follows:

*. (1) The Registrar shall, if requested by a proprietor of land or a lease where no title deed or certificate of lease has been issued, issue to him a title deed or a certificate of lease, as the case may be, in the prescribed form showing, if so required by the proprietor, all subsisting entries in the register affecting that land or lease:*

*Provided that -*

*(i) only one title deed or certificate shall be issued in respect of each parcel of land or lease;*

*(ii) no title deed or certificate of lease shall be issued unless the lease is for a certain period exceeding twenty-five years.*

*(2) A title deed or certificate of lease shall be only prima facie evidence of the matters shown therein, and the land or lease shall be subject to all entries in the register.*

The plaintiff to prove her case produced a certificate of lease which document was prepared by an advocate whose associate gave evidence that indeed the defunct Municipal council of Eldoret instructed the firm of Gicheru & Co. Advocates to prepare the said instrument. The lease document was registered at the lands office on the 30<sup>th</sup> March 2012.

The defendants who had sued Grace Cherotich in Eld. E& L No. 344/13 failed to tender any evidence being plaintiffs in that case. The evidence by the plaintiff stood unchallenged. The defendants had been given many chances to come to court but they failed. The defendant's advocate even entered into a consent with the plaintiff's advocate to have the plaintiff cross-examined but failed to attend court.

From the evidence on record and the documents produced together with the submissions by counsel, I find that the plaintiff has proved her case on a balance of probabilities against the defendant with costs. Case No 344 of 2013 by Danson Njuguna Gachoka against Grace Cherotich Kemboi is dismissed with costs. I therefore make the following orders.

a) A declaration is hereby issued that the acts of the defendant in trespassing into land parcel known as ELDORET MUNICIPALITY/BLOCK 9/1322 are unlawful.

b) An order of perpetual injunction is hereby issued restraining the defendant from further constructing, trespassing or proceeding to assume occupation, charge or transfer or sell the said land parcel.

c) The defendant to give the plaintiff vacant possession of parcel known as ELDORET MUNICIPALITY/BLOCK 9/1322 together with the removal and demolition of structures within 30 days failure of which eviction to issue.

d) Costs and interest to be paid by the defendant.

e) Suit No. Eldoret E&L No 344 of 2013 is hereby dismissed with costs.

**DATED and DELIVERED at ELDORET this 26<sup>TH</sup> DAY OF FEBRUARY, 2020**

**M. A. ODENY**

**JUDGE**

**JUDGMENT** read in open court in the presence of Mr. Cheruiyot holding brief for Chepkilot for Defendant and in the absence of Wambua Kigamwa for the Plaintiff.

Mr. Yator – Court Assistant