



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC CASE NO. 25 OF 2016

REUBEN KIPTONUI KOSKE.....PLAINTIFF

VERSUS

EDWIN YEGO ALIAS ISSAC.....1ST DEFENDANT

CHESONGONY RUTO.....2ND DEFENDANT

JUDGMENT

INTRODUCTION

1. By a plaint dated 5th May 2016 the Plaintiff filed suit against the defendants seeking an order of eviction against the defendants as he alleged that they had trespassed upon his parcel of land known as KERICHO/ KAPSAOS/ 971.
2. In their defence dated 22nd November 2016 the defendants denied that the plaintiff was the registered proprietor of the suit property and alleged that he had fraudulently registered himself as the owner of the suit property. They further denied the acts of trespass alleged by the plaintiff.
3. The suit was set down for hearing on 11th June 2019 by which time the 2nd defendant had passed away. The 1st defendant who was aware of the hearing date did not attend court. The case therefore proceeded ex-parte.
4. The plaintiff testified that he was the registered owner of land parcel no. KERICHO/KAPSAOS/ 971. He produced the title deed in respect of the suit property as plaintiff's exhibit 1. He stated that sometime in 1984, he entered into an agreement with the 2nd defendant for the exchange of their parcels of land. The defendant's parcel of land is known as L.R NO. KERICHO/KAPSAOS/670. Soon after entering into the said agreement, the plaintiff moved to parcel no. KERICHO/KAPSAOS/670 while the defendants took possession of parcel no 971. The plaintiff carried out some developments by constructing a house and planting tea bushes. He produced photographs of the said developments as plaintiff's exhibit 3(a)-(d). He further testified that sometime in the year 2005, the 2nd defendant chased him away from land parcel no. 670 and demolished his house. In the meantime, the defendants continued to occupy land parcel no. 971. The defendants are therefore occupying both land parcel no. 670 and land parcel no. 971 thus denying the plaintiff the use and occupation of his land. He testified that the 2nd defendant who was occupying his land had died in April 2019.
5. The plaintiff filed submissions in support of the plaintiff's case which I have considered.

ISSUES FOR DETERMINATION

6. Having considered the pleadings, evidence and Plaintiff's submissions, the following issues fall for determination.
 - i. Whether the plaintiff is the registered proprietor of land parcel no. KERICHO/KAPSAOS/971
 - ii. Whether the agreement for exchange of land parcel KERICHO/KAPSAOS/971 and KERICHO.KAPSAOS/670 was valid.
 - iii. If the answer to (ii) above is in the negative, whether the defendants should be evicted from land parcel no. KERICHO/KAPSAOS/971.
 - iv. Who should bear the cost of this suit?
7. With regard to the first issue, the plaintiff produced a title to prove that he is the registered proprietor of land parcel no.

KERICHO/KAPSAOS/971. Section 22 of Land Registration Act states that;

“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....”

Section 24 of the Land Registration Act No 3 of 2012 provides as follows:

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 25 (1) of the said Act further provides that:

the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to any lawful encumbrances, set out in this section.

Section 26 of the same Act provides that:

the certificate of title issued by the Registrar upon registration, ort 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 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 grounds of fraud, or misrepresentation to which 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.

8. The plaintiff never ceased to own the suit property and his rights to the same are still intact. He is therefore entitled to protection of the law both under Article 40 of the Constitution and under the Land Registration Act. As a registered owner of the suit property the plaintiff has a right to enjoy quiet and peaceful possession and occupation thereof.

9. With regard to the second issue, even though the plaintiff testified that he had exchanged his land with that of the defendants, he never produced any written agreement to prove the said exchange. Furthermore, no documents of transfer were exhibited to authenticate the exchange. In the circumstances, the said **exchange was not sanctioned by the law and was therefore invalid.**

10. The plaintiff seeks to evict the defendants so that he can return to his parcel of land. From the evidence on record, it is clear that the defendants have no right to occupy the suit property without the plaintiff's consent. Their continued occupation of the suit property is therefore unlawful and the plaintiff is entitled to an order of eviction.

11. From the foregoing, it is evident that the plaintiff has proved his case on a balance of probabilities. Consequently, I enter judgment for the plaintiff as prayed in the plaint and make the following final orders:

a) It is hereby declared that the plaintiff is the lawful proprietor of land parcel no. KERICHO/KAPSAOS/971

b) The defendants, their legal representatives or assigns or anyone claiming on their behalf shall vacate land parcel no. KERICHO/KAPSAOS/971 within 30 days failing which they shall be forcefully evicted therefrom upon application.

c) The costs of this suit shall be borne by the 1st defendant.

Dated and signed at Kisii this 21st of January 2020.

J.M ONYANGO

JUDGE

Dated, signed and delivered at Kericho this 5th day of February, 2020.

ANTONY KANIARU

JUDGE