



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC 338 OF 2015

JEREMIAH NYAMBOGO MOLLO.....PLAINTIFF

VERSUS

PITHALIS ODORO.....1ST DEFENDANT

AINDA ONGARO.....2ND DEFENDANT

GEORGE ODHIAMBO.....3RD DEFENDANT

JUDGEMENT

Jeremiah Nyambogo Omollo (*hereinafter referred to as the Plaintiff*) has come to this court against Pithalis Odoro, Ainda Onga'oro, George Odhiambo and Joyce Ainda (*hereinafter referred to as the defendants*) claiming that the right of ownership of Land Parcel No. KISUMU/BUOYE/1352 by way of an oral will and by way of inheritance of the matrimonial home of the plaintiff's grandmother being Masela Adoyo (deceased). He prays that the 1st Defendant's names registered on the L. R. No. Kisumu Buoye/1354 as the owner and proprietor therein be nullified with the result that the Plaintiff's names be registered as the owner and proprietor thereon and a restriction registered on the said parcel of land renamed. He prays that there be an order of eviction against the 3rd and 4th Defendants from the suit property and the 2nd Defendant body buried on the suit property exhumed. The plaintiff further prays that there be an order restraining the defendants by themselves, their agents, servants and/or employees from interfering with the plaintiff's peaceful possession and occupation of the suit land in any moreover whatsoever and howsoever. The plaintiff prays for costs of the suit. The 1st Defendant filed memorandum of appearance but no replying affidavit.

In the supporting affidavit the plaintiff states that the defendants' action can breed hatred and physical confrontation hence the urgency sought in this application. He is a resident of Mayenya sub-location and the second born son of the family of JOHN OMOLLO OURUMA and that they said John Omollo Ouruma was the only son to Masela Adongo Bwodo.

He asserts that at all the material times relevant to the foregoing, the said piece of land known as KSM/BUOYE/1352 was where the home of the said Masela Adongo situated within Buoye registration section who was also a widow to one Martinus Bwodo. That by the time of demarcation, the said Masela forwarded the name of the plaintiff to be registered as the owner and proprietor of the said piece of land. That soon thereafter, the 1st respondent lodged a claim before the area adjudication section which referred the same back to the area chief who constituted a panel of clan elders whom affirmed the applicant as the rightful owner of the said plot.

Sometimes in the year 2009, the plaintiff noticed the 2nd defendant putting a home on the said plot and upon enquiry he was chased by two machete wielding people who warned him not to return. The said act was reported to the area chief, Kondele Police Station and the then area district commissioner wherein he only got the advice of seeking a court injunction and eviction order. He visited the lands office registry at Kisumu and found that Buoye registration section was still in adjudication section but the plaintiff's name was confirmed as the registered proprietor.

He laments that early this year the 3rd defendant trespassed and or occupied illegally part of the said plot by building his home on the same. That the plaintiff revisited the lands office and was shocked to learn that a green card was made on October 2010 bearing the names of the 1st defendant as the proprietor and that the same has since been restricted and that the defendants have taken advantage of the death of the plaintiff's father and grandmother to deprive the plaintiff of his property and that the defendants have since started working on the said piece of land been interfering with the plaintiff ownership occupation of the same and cut down trees that the plaintiff had maintain there.

According to the plaintiff, the 1st defendant's action amounts to cheating public officers with a view of grabbing the said piece of land and or impersonation of the heir to the estate of the said Masela Adongo which is the contrary to the whims and aspiration of the spirit of fairness in a society.

The defendants are currently threatening the plaintiff of dire consequences should he continue pressing on with this application which action if not stopped by this court can cause mayhem and also contravenes the relevant laws of our land. That it is circumstantially very true that the said registration and restriction of the disputed piece of land is a mischievous game by the defendants to deny the plaintiff his rightful possession of the same. That this application is brought in good faith orders being prayed for herein if granted will not in any way prejudice the interest of the defendants as he only seeks to secure truthful and rightful gift of his grandmother. He seeks an order for nullification of the said title number and reverting the same to the plaintiff's name and issue a new title deed in the name of the plaintiff against the 1st defendant whose lust for acquisition of easy wealth and or grabbing of other people's properties is his main intent and purpose. That the orders prayed for herein if granted will set a very good precedent in dealing with societal problems which this Honourable court has inherent powers to curb. ***The defendants were served but did not file a response or attend court.***

I do find that the plaintiff's evidence is not controverted that the said parcel of land was the home of Masela Adongo Bwodo the mother of John Omollo Oruma who is father of the plaintiff. Masela Adongo was widow to Maritius Bwodo Masela Adongo forwarded the name of the plaintiff to be registered during demarcation. The defendants have encroached on the land. The plaintiff has proved on a balance of probabilities that he is entitled to the land.

The upshot of the above is that I do order that the 1st defendant's name be revoked/nullified and the same be registered in the plaintiff's name, and any restriction registered in LR/NO. Kisumu/Buoye/1352 is hereby removed. Moreover, there is hereby granted an order of eviction against both the 2nd and 3rd defendants/respondent from the suit property after expiry of a 90 days' notice to be issued by the plaintiff. Furthermore, there is hereby issued an order restraining the defendants by themselves, agents, servants and or their employees from interfering with the plaintiff's peaceful possession and occupation of the said parcel of land being LRN NO. Kisumu/Buoye/1352 in any manner whatsoever/or howsoever. Costs of this originating summons be borne by the defendants. Orders accordingly.

DATED AND DELIVERED THIS 30th DAY OF APRIL, 2020.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

This judgment is hereby delivered to the parties by electronic mail due to the measures restricting court operations due to COVID - 19 pandemic and in light of directions issued by the Honourable Chief Justice on 15TH March 2019 and with the consent of the parties.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE