



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC CASE NO. 293 OF 2013

KIPTANUI A. KOGO.....PLAINTIFF

VERSUS

KIBOR A. ROTICH.....DEFENDANT

JUDGMENT

By a plaint dated 21st May 2013 the plaintiff herein sued the defendant seeking for the following orders:

- a. Nullification and revocation of title No. NANDI/KONGORO/410 in the name of the defendant and registering the same in the name of KIPTANUI A KOGO the plaintiff herein.
- b. Costs
- c. Any other relief that this honourable court may deem fit and just to grant.

The defendant was served with summons to enter appearance and the plaintiff fled a defence and counterclaim seeking for orders of eviction against the plaintiff from the suit parcel of land.

The plaintiff was served with a hearing notice but did not attend court during the hearing. Counsel for the defendant urged the court to dismiss the plaintiff's case and allow the defendant to proceed with his counterclaim. The plaintiff's suit was consequently dismissed with costs for non-attendance and the defendant proceeded with the hearing of his counterclaim.

It was the defendant's case that he is the registered owner of the suit land known as NANDI/KONGORO/410 having been registered as such as the first owner during adjudication. The defendant stated that he granted permission to the plaintiff to occupy the said parcel of land but the plaintiff has now refused to vacate the defendant's land even though he has been urged to do so.

ANALYSIS AND DETERMINATION

The plaintiff's suit was dismissed for non-attendance and the defendant was allowed to proceed with his counterclaim. The issue for determination in this case is who the rightful owner of the suit land.

The defendant produced the title deed and an official search for the suit land parcel No.

Nandi/Kongoro/410 which show that the defendant is the registered owner. The defendant's proprietary rights over land parcel No. Nandi/Kongoro/410 are protected under sections 24 and 25 of the Land Registration Act. He is entitled to possession and use of his land and trespassers ought to be removed from the land.

Section 26 of the Land Registration Act provides;

(1) 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, 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 the ground of fraud or misrepresentation 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.

Section 26 of the Land Registration Act is categorical that a certificate of title is prima facie evidence that the person named therein is the proprietor of the land but the same can be challenged where the Certificate of title has been acquired fraudulently, unprocedurally or through corrupt practice.

There was no evidence that the titled deed was issued unprocedurally. The defendant explained the root of his title which was vide adjudication. In the case of **Alubisa Achesa v. Miheso Masinde [2018] eKlr** where the court held,

The registered owner of land has absolute proprietary rights over the land which is exclusive, peaceful, unfettered & unimpeded occupation and use thereof as stipulated in the Registration of Land Act.

I therefore find that the defendant has proved his counterclaim and the same is allowed as prayed.

- a. The plaintiff to give vacant possession of the suit land within 45 days failure of which eviction orders to issue.
- b. Plaintiff to pay cost of the dismissed suit together with costs of the counterclaim.

DATED and DELIVERED at ELDORET this 23RD DAY OF APRIL, 2020

M. A. ODENY

JUDGE