



IN THE REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT

AT ELDORET

ELC CASE NO. 141 OF 2017

SAMOEI MONGONY.....PLAINTIFF

VERSUS

MUSA MONGONY.....DEFENDANT

JUDGMENT

By a plaint dated 29th March 2017 the plaintiff herein sued the defendant seeking for the following orders:

- a. An order that the defendant, his servants or agents be and is hereby evicted from land parcel No UASIN GISHU/KONDOO/766.
- b. Costs of the suit
- c. Further or any other relief as this court may deem fit to grant.

The defendant was served with summons to enter appearance together with the plaint but neither entered appearance nor filed a defence. The matter therefore proceeded by way of formal proof.

It was the plaintiff's case that he is the registered owner of that parcel of land known as UASIN GISHU/KONDOO.766. The plaintiff produced a copy of a title deed to the suit land as an exhibit.

PW1 further stated that the defendant is in occupation of the suit land and that they have tried to resolve the matter at the chief's office whereby he produced the minutes of the meeting at the chief Tarakwa location's office as an exhibit before the court.

PW1 further stated that he the allowed his father to settle in the suit land to take care of it for him and the father settled in the land with some of the Plaintiff's brothers including the defendant who were minors by then. It was PW1's evidence that the defendant later refused to vacate the suit parcel of land. He therefore prayed for judgment to be entered as prayed in the plaint.

Counsel for the plaintiff filed submissions and relied of Section 24, 25 and 26 of the Land Registration Act which provides that an interest is conferred by registration subject to this Act shall vest in that person the absolute ownership of that land together with rights and privileges and appurtenant belonging thereto. Counsel therefore urged the court to grant the orders as prayed with costs.

ISSUES AND DETERMINATION

The issue for determination in this case is as to whether the plaintiff is entitled to the orders sought for vacant possession of the suit land.

From the evidence on record the plaintiff stated that he is the registered owner of the suit land and this was supported by the production of the title deed which is in his name. The plaintiff further produced minutes of a meeting at the Chief's office Tarakwa which deliberated on the issue with a resolution that the defendant moves out of the suit land.

The defendant was served with summons to enter appearance but neither entered appearance nor filed a defence. The plaintiff's claim is therefore uncontroverted.

Section 26(1) of the Land Registration Act which provides as follows"

"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. '

Further, Section 24 (a) of the Land Registration Act further stipulates as follows: ' **subject to this Act, the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.....'**

In the case of **Ahmed Ibrahim Suleiman and Another vs. Noor Khamisi Surur (2013) eKLR** Mutungi J stated that ' *the Plaintiff having been registered as proprietor and having been issued with a certificate of lease over title No/ Nairobi/Block 61/69 are in terms of section 26(1) of the Land Registration Act entitled to the protection of the law*'.

Further in the case of **WILLY KIPSONGOK MOROGO v ALBERT K. MOROGO (2017) eKLR** where the Court held as follows: ' *the evidence on record shows that the suit parcel of land is registered in the name of the Plaintiff and therefore is entitled to the protection under sections 24, 25 and 26 of the Land Registration Act.*'

I have considered the pleadings, the evidence and submission by counsel and find that the plaintiff has proved his case on a balance of probabilities. There is no evidence that the plaintiff's title is tainted with illegality or fraud. I therefore make the following specific orders.

a. That the defendant do give vacant possession of the suit land to the plaintiff with 30 days from the date of the judgment failure of which eviction to issue.

b. The defendant to pay costs of the suit

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

M. A. ODENY

JUDGE