



REPUBLIC OF KENYA.

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 253 OF 2016

RONALD ONYANGO OBONGO....PLAINTIFF

VERSUS

JACKTONE OWINO DEFENDANT

JUDGEMENT

The plaintiff avers that at all material times he is the registered owner, of whole of that parcel of land known as L.R. No. West Bunyore/Ekwanda/627 measuring approximately 0.49 Ha and/or thereabouts. The defendant has willfully, unlawfully, without justifiable cause of action, permission, consent, any colour of right, and or otherwise trespassed and/or encroached upon the plaintiff's parcel of land better known as LR. No. West Bunyore/Ekwanda/627, occupied and erected a residential house thereon. That plaintiff avers that the defendant's occupation of the suit land is causing him a lot of irreparable damages and anxiety. The plaintiff's claim against the defendant is for an order of eviction of the defendant, his agents, servants and/or anybody acting for and on his behalf from the plaintiff's parcel of land known as LR. No. West Bunyore/Ekwanda/627. The plaintiff's further claim against the defendant is for an order of permanent injunction restraining the defendant, his agents, servants, and/or anybody acting for and on his behalf from interfering, occupying, alienating, wasting and/or otherwise the plaintiff's parcel of land known as L.R. No. West Bunyore/Ekwanda/627. The plaintiff prays for judgment against the defendant jointly and severally for:-

- a. An order of eviction of the defendant, his agents, servants and/or anybody acting for and on his behalf from the plaintiff's parcel of land known as LR. No. West Bunyore/Ekwanda/627.
- b. An order of permanent injunction restraining the defendant, his agents, servants, and/or anybody acting for and on his behalf from interfering, occupying alienating, wasting and/or otherwise the plaintiff's parcel of land known as L.R. No. West Bunyore/Ekwanda/627.
- c. Costs of this suit.
- d. Any other relief this honourable court may deem just and expedient.

This court has carefully considered the evidence therein. The defendant was served but failed to attend court or file any defence. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

“Subject to this Act, 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 26 (1) of the Land Registration Act states as follows:

“The Certificate of Title issued by the Registrar upon registration ... 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... 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.”

The law is clear that, the Certificate of Title issued by the Registrar upon registration 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 and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

This court in considering this matter referred to the case of Elijah Makeri Nyangw'ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. The Judge in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

It is a finding of fact the plaintiff is the registered proprietor of Land parcel No. West Bunyore/Ekwanda/627. The plaintiff produced the title deed PEx1. The plaintiff testified that the defendant has willfully, unlawfully, without justifiable cause of action, permission, consent, any colour of right, and or otherwise trespassed and/or encroached upon the plaintiff's parcel of land known as L.R. No. West Bunyore/Ekwanda/627, occupied and erected a residential house thereon. The plaintiff's evidence is unchallenged. The defendant offered no defence. I find that the plaintiff's title is indefeasible and can only be challenged if it was issued through a fraudulent scheme which the defendant has not proved. I find that the plaintiff has proved his case on a balance of probabilities and grant the following orders;

1. The defendant, his agents, servants and/or anybody acting for and on his behalf are to vacate the plaintiff's parcel of land known as L.R. No. West Bunyore/Ekwanda/627 within the next 6 (six) months from the date of this judgement and default eviction order to issue forthwith.
2. Thereafter order of permanent injunction restraining the defendant, his agents, servants, and/or anybody acting for and on his behalf from interfering, occupying alienating, wasting and/or otherwise the plaintiff's parcel of land known as L.R. No. West Bunyore/Ekwanda/627.
3. No orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED THIS 16TH DAY OF APRIL 2020.

N.A. MATHEKA

JUDGE