



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 763 OF 2017**

**JOSEPHAT NCHAAKO KONOISYA.....PLAINTIFF**

**VERSUS**

**NGINA MUNYWOKI.....DEFENDANT**

**JUDGEMENT**

By a Plaint dated 9<sup>th</sup> June, 2017 the Plaintiff prays for judgement against the Defendant for:

- a) An eviction order directed to the Defendant ordering her to forthwith vacate the Plaintiff's parcel of land namely LR No. KAJIADO/ KAPUTIEI CENTRAL/ 2283.
- b) A permanent injunction restraining the Defendant, her families, kin, agents, employees, servants or anyone claiming under her from trespassing upon, ingressing into, cultivating, selling, disposing off or in any other manner interfering with the Plaintiff's possession and ownership of Land Reference Number KAJIADO/ KAPUTIEI – CENTRAL/ 2283.
- c) Costs of this suit.
- d) Any other relief that this honourable court may deem just and fair to order.

The Defendant though duly served as evident by the affidavit of service sworn on 22<sup>nd</sup> June, 2017 and filed in Court on 20<sup>th</sup> December, 2017, failed to enter appearance nor file a Defence and an interlocutory judgement was entered on 22<sup>nd</sup> December, 2017, after which the matter proceeded for hearing on 2<sup>nd</sup> March, 2020.

**Evidence of the Plaintiff**

The Plaintiff as PW1 stated that he is the registered proprietor of land parcel number KAJIADO / KAPUTIEI – CENTRAL / 2283 hereinafter referred to as the 'suit land'. He testified that he was given the land by his father during his lifetime. It was his testimony that the Defendant had trespassed on the suit land, put up some temporary structures thereon and commenced cultivating it including cutting down trees, claiming she bought the same from his father. He confirmed that his lawyers messrs Nyandieka & Associates Advocates sent a demand letter dated the 16<sup>th</sup> November, 2012 to the Defendant to desist from trespassing on the suit land but she declined to do so. Further, she refused to heed the Chief and Elders' appeal to cease from trespassing on the suit land. The Plaintiff produced his Certificate of Title for KAJIADO/ KAPUTIEI – CENTRAL/ 2283, Demand Letter dated the 16<sup>th</sup> November, 2012 from messrs Nyandieka & Associates Advocates and his Identity Card as his exhibits.

The Plaintiff later filed his submissions.

**Analysis and Determination**

Upon consideration of the Plaint, Testimony of the Plaintiff, Exhibits and Submissions, the following are the issues for determination:

- Whether the Plaintiff is the registered proprietor of the suit land and if the Defendant is in lawful occupation thereon;
- Whether the Plaintiff is entitled to the Orders sought in the Plaint.

As to whether the Plaintiff is the registered proprietor of the suit land and if the Defendant is in lawful occupation thereon. The Plaintiff claimed he is the registered proprietor of the suit land and produced a Certificate of Title dated the 3<sup>rd</sup> September, 2012 to that effect. The Defendant failed to controvert the Plaintiff's averments as she did not file a Defence. Section 24 (a) of the Land Registration Act provides that: ***"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."***

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

Based on my analysis above, I find that the Plaintiff's Certificate of Title remains undisputed and is conclusive and prima facie evidence that he is indeed the registered and absolute proprietor of land parcel number KAJIADO/ KAPUTIEI CENTRAL/ 2283, with vested rights and interests therein. The Plaintiff as PW1 testified that the Defendant had proceeded to put up temporary structures on the suit land claiming she bought the same from his father. Since she did not controvert the Plaintiff's evidence, I hold that her entry into the suit land is unlawful. Further, in associating myself with the decision cited above, as well as the evidence before me, I find that the Plaintiff is indeed entitled to protection of the law in accordance with the provisions of section 24, 25 and 26 of the Land Registration Act.

As to whether the Plaintiff is entitled to the Orders sought in the Plaintiff. The Plaintiff sought for orders of eviction as well as a permanent injunction to restrain the Defendant from interfering with his occupation of the suit land. The Plaintiff's contention is that the Defendant illegally and unlawfully entered into the suit land and erected a temporary structure and commenced cultivating it. PW1 confirmed that he sought the intervention of the Chief, Elders and his lawyers who sent a demand letter to the Defendant to desist from trespassing on the suit land but she failed to do so. The Plaintiff's allegation of the Defendant's acts of trespass on the suit land remained uncontroverted. The Plaintiff in his submissions contended that he had established proprietary rights over the suit land and that the Defendant should be evicted therefrom to enable him enjoy the quiet use including possession of the same. He relied on the case of ***Margaret Njeri Wachira V Eliud Waweru Njenga (2018) eKLR*** to support his arguments. Further on the issue of a permanent injunction restraining the Defendant from the suit land, he relied on the decision of ***Vincent Koskei V Bernard Koskei (2018) eKLR*** to buttress his averments. Since I had already held that the Plaintiff is the registered proprietor of the suit land and entitled to protection of the law, I find that he is indeed entitled to the orders sought in the Plaintiff. I direct that the Defendant being a trespasser is to vacate the suit land within ninety (90) days from the date of this judgement failure of which eviction should issue in accordance with the provisions of the law. Further, I direct that the Defendant should be permanently restrained from interfering with the Plaintiff's possession, occupation and enjoyment over the suit land.

On who should bear the costs of the suit, since the Plaintiff is the inconvenienced party, I will award him the costs of the suit.

It is against the foregoing that I find the Plaintiff has proved his case on a balance of probability and will proceed to enter judgement in his favour as against the Defendant and make the following final orders:

- i. The Defendant be and is hereby directed to forthwith vacate the Plaintiff's parcel of land namely LR No. KAJIADO/ KAPUTIEI CENTRAL/ 2283 within ninety (90) days from the date hereof, failure of which an eviction order should issue in accordance with the provisions of the law.
- ii. A permanent injunction be and is hereby issued restraining the Defendant, her families, kin, agents, employees, servants or anyone claiming under her from trespassing upon, ingressing into, cultivating, selling, disposing off or in any other manner interfering with the Plaintiff's possession and ownership of Land Reference Number KAJIADO/ KAPUTIEI – CENTRAL/ 2283.
- iii. Costs of this suit is awarded to the Plaintiff.

**Dated Signed and Delivered via email this 28<sup>th</sup> Day of July, 2020.**

**CHRISTINE OCHIENG**

**JUDGE**