



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 491 OF 2013

MARK KIPROTICH SIRMA.....PLAINTIFF

VS

SOSTEN KIPLAGAT SINGOEI.....DEFENDANT

JUDGMENT

By plaint dated and filed on 25/10/2013 the plaintiff avers that he is a sole registered owner of all that parcel of land known as NANDI/KOKWET/688 having purchased the suit land parcel from one Jemaiyo Kogo (now deceased). That upon purchasing the said suit land, the plaintiff lawfully caused the same to be transferred and to be registered in his name and consequently he was issued with a title deed on 5th August 1994. The Plaintiff is therefore the first registered owner of all that parcel of land known as NANDI/KOKWOT/688 vesting in him the absolute ownership thereof together with all rights and privileges appurtenant thereto. It is the plaintiff's case that he discretionally, willfully and temporarily permitted the defendant who is his brother to occupy the suit land. The defendant was to occupy the suit land while arranging for his own alternative means of abode and/or occupation. The defendant has since declared that he shall not move from the suit land despite the plaintiff's numerous requests and demands being made for vacant possession of the suit land. He avers that it was his conditional term of memorandum of understanding with the defendant that the defendant would give the plaintiff vacant possession of the subject suit land upon required and upon demanded to. The plaintiff has been frustrated by the defendant's conduct on several occasions who appears intent at depriving the plaintiff his ownership rights to his parcel of land as he has refused, been adamant and ignored the demands to surrender and give him vacant possession of the suit parcel of land aforesaid and contends that he has never sold nor granted the Defendant nor any other person the suit land or charged the same in favour of any financial institution and therefore the actions of the defendant in refusing to give him vacant possession of the suit land at the instant demand of the plaintiff amounts to trespass and consequently denying him the right to exclusive occupation, utilization and enjoyment of the property.

The defendant was duly served but failed to enter appearance and file a statement of defence however, the Deputy Registrar directed that the matter be heard.

The matter came for hearing on 5/2/2013 and the plaintiff adopted his statement on oath where he states that he is the registered owner of the whole of that parcel of land known as NANDI/KOKWET/688 hereinafter referred to as the suit parcel. He obtained ownership of the suit parcel having purchased it from one JEMAIYO KOGO now deceased.

That upon purchase of the suit parcel he lawfully caused the same to be transferred and registered in the plaintiff's names. On the 5th of August 1994 he was issued with a title deed to the suit parcel. Upon taking possession, requested his younger brother, the defendant to help him with taking care of cattle which he had brought on the suit parcel. He agreed to the arrangement which was of a temporary

duration as he had other plans of commencing developments on the suit parcel.

In the year 1998, having made up his mind to undertake construction work on the suit parcel, he approached the defendant and informed him of his plans and that it was time to move out as per their prior arrangement but to his shock and disbelief the defendant blatantly refused to vacate the suit land and insisted on staying on despite the fact that he had no legal justification, right or claim over the suit parcel.

The defendant's occupation of the suit parcel was based on a memorandum of understanding that he would vacate and give vacant possession as and when demanded. Accordingly the defendant's continued unlawful stay and occupation of the suit parcel is a violation of my legally entitled rights and a callous act calculated to deprive me of the suit parcel.

The plaintiff prays to this Honourable court to enter Judgment against the defendant as prayed in the plaint. He produced a title deed indicating that he is registered as the absolute proprietor of the land. He also produced a certificate of search as evidence that he is the current proprietor of the parcel of land. Lastly, he produced the effect that he gave notice to the defendant of the impending suit.

I have considered the evidence on record and do find that the plaintiff is registered as the absolute proprietor of the parcel of land in issue and that the defendant is occupying the same without the plaintiff's permission.

Section 24 (a) of Land Registration (Act No.3 of 2012) provides as follows;

S.24 (a) "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."

The registration of the plaintiff as proprietor of the parcels of land, gives the plaintiff absolute proprietorship for the parcels. Such absolute proprietorship can only be subject to certain rights and privileges as are known to law. That is why Section 25 of the Act provides as follows;

S.25 (i) "The right of a Proprietor, whether acquired on first registration or subsequently for valuable consideration or by order of court, shall not be liable to be defeated except as provided by this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, subject;

(a) to leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by Section 28 not to require noting on the register, unless the contrary is expressed in the register.

The defendant has not come forward to say what his claim on the suit land is. The plaintiff complains that the defendant is utilizing his parcel of land. That is in violation of the plaintiff's right and privileges over the parcel of land as contained in Section 24 of the Act. The plaintiff has produced Title Deed as evidence of ownership and in terms of Section 26 (1) of the Act;

"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 and endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except –

a. On the ground of fraud or miss-representation to which the person is proved to be a party to;

b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt

scheme.”

The plaintiff as the registered owner of the suit land has an indefeasible right over the property. The plaintiff's rights as proprietor of the lands is clearly protected in law and the defendant has no reason to trespass thereon. The law allows the Defendant to challenge the plaintiff's ownership on grounds of illegality, unprocedural acquisition or corrupt scheme. He did not do that in this suit.

I do find that the plaintiff has proved his case on a balance of probabilities, and do grant the prayers in the plaint thus

- a. *A declaration that the plaintiff is the absolute registered owner of all that parcel of land known as NANDI/KOKWET/688 and the defendant is a trespasser.*
- b. *Mesne profits from 1998 when he commenced demanding for vacant possession of the suit land and loss of user from the vacant possession ought to have been given to the plaintiff on demand.*
- c. *An order of eviction of the defendant, his agents and or servants from the suit land.*
- d. *An order of permanent injunction to restrain the defendant from further inter meddling, interfering and/or in anyway dealing with the suit land.*

Costs of the suit to be paid by the defendant. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF FEBRUARY 2015

JUSTICE OMBWAYO ANTONY

ENVIRONMENT AND LAND COURT AT ELDORET