



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL 257 OF 2012

PETER KIGIA JORAM.....PLAINTIFF

VERSUS

BORNES CHERONO BARTA.....DEFENDANT

JUDGEMENT

The plaintiff Peter Kigia Joram filed a plaint against the Defendant Bornes Cheronno Barta seeking the following orders:

1. Vacant possession and an order of eviction
2. *Mesne* profits at Kshs 300,000 annually with effect from 2009.
3. General damages for trespass.
4. A Permanent injunction restraining the Defendant either by herself, agents and/or servants from dealing with the property or interfering with the plaintiff's quiet enjoyment of Nakuru/Sondu River/36.
5. Costs.

The Defendant was served but did not enter appearance. Judgment was entered on 29th May 2012 and the matter listed for formal proof.

When the matter came for hearing before me on 2nd May 2013, the plaintiff gave oral evidence and called one.

The plaintiff (PW1) testified that he is the registered owner of Nakuru/Sondu River/36 (here after referred to as the suit land) which was sold to his late father by Daniel M Wainaina and later transferred to him after his father died: That he paid all the requisite fees and acquired a title deed in his name: That he and his family lived on the suit land between 1985 to 1992 but left following the 1992 land clashes: That he later found out that one Bornes Cheronno Barta had been living on the suit land since 2009 without his consent and despite her appearing before the chief and D.O Kuresoi the defendant has failed to vacate or produce proof of ownership of the suit land.

He produced as exhibit in evidence a title deed in his name, an official search, consent from the land control Board and receipt of payment of stamp duty.

Esther Njeri Kigia (PW2) testified that she was mother to the plaintiff and that the suit land was transferred to him by Daniel M Wainaina. She stated that they had lived on the suit land from 1985 to 1992 when they were forced to leave the suit land due to the 1992 Land clashes. During their stay on the suit land they carried out various Economic Activities which included planting maize, pyrethrum,

cabbage and also kept Dairy cattle earning them an annual income of about Kshs 350,000.

I have taken into consideration the evidence adduced by the two witnesses both oral and documentary and the counsel's submissions and I find that the plaintiff's testimony has been corroborated by PW2.

Sections 27 and 28 of the repealed Registered land Act cap 300 (which governed the suit land when registration was effected) protects the rights of a registered owner of Land.

27. Subject to this Act -

(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.....

(b).....

28. The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto free from all other interests....."

I am satisfied from the evidence adduced that the certificate of title held by the plaintiff is conclusive evidence of proprietorship and there being no evidence to the contrary I enter judgment as prayed in the plaint and order as follows:-

1. That the Defendant gives vacant possession of the suit land within 30 days from the date hereof, failure of which the Defendant be evicted from the suit land.
2. A Permanent injunction is granted restraining the Defendant either by herself, agents and/or servants from dealing with the property or interfering with the plaintiff's quiet enjoyment of Nakuru/Sondu River/36.
3. No order is granted on costs as the defendant did not enter appearance.

Dated signed and delivered in open court at Nakuru this 5th day of July 2013.

L N WAITHAKA

JUDGE

Present

Mr Orege for the plaintiff

N/A for defendant

Stephen Mwangi : Court Clerk

L N WAITHAKA

JUDGE