

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC CASE NO. 695 OF 2012

DINAH JEPCHIENG CHEPYEGON 1ST
PLAINTIFF
RODAH CHEPTOO 2ND
PLAINTIFF

-VERSUS-

KEVIN KIPTANUI KIMWATAN 1ST
DEFENDANT
PAUL KIMUTAI KIMWATAN 2ND
DEFENDANT
KIPKORIR KIMWATAN 3RD
DEFENDANT
KIPKOECH KIMWATAN 4TH
DEFENDANT
KIPCHIRCHIR KIMWATAN 5TH
DEFENDANT

JUDGMENT:

1. The Plaintiffs instituted this suit vide a Plaint dated 17.03.2011 and Amended on 14th September, 2012, against the Defendants jointly and severally, seeking the following ORDERS;

- a. Permanent Orders of injunction.**
- b. Costs of this suit.**
- c. Any other relief that this court may deem fit to grant.**

Plaintiffs' Case:

2. The Plaintiffs contend that vide sale agreements dated 04.05.2006 and 13.07.2007, they individually/separately purchased parcels of land known as Karuna/Karuna Block 1 (Chebonet) 49 and Karuna/Karuna Block 1 (Chebonet) 52 (hereinafter referred to as suit properties) from the 2nd defendant at a consideration price of Kshs. 2,400,000/= and Kshs. 640, 000/= respectively.
3. That pursuant to the said sale, the entire consideration amount was paid and the suit properties were subdivided into several portions, the portions purchased by the 1st and 2nd plaintiffs given Nos. Karuna/Karuna Block 1 (Chebonet) 49 and 52 respectively. The said portions were subsequently transferred and registered in their names respectively and title deeds issued to that effect.
4. They thereafter took possession and have been utilizing the suit properties by planting seasonal crops without any interference from any person.
5. It is however their claim that sometimes around 05.03.2011 and March, 2012, the defendants without any color of right invaded and/or trespassed into the suit properties and began ploughing crops.
6. They further aver that efforts to stop the defendants' acts of trespass including reporting the matter to Maibeki police

post under O.B. No. 6/14/03/2011 were all in vain hence the instant suit.

7. In conclusion, the plaintiffs urged the court to grant the orders sought in the amended plaint in the nature of permanent injunction to restrain the defendants from entering, ploughing, planting or in any other way dealing with the suit land as well as costs of the suit.

Defendants' Case:

8. The plaintiffs' case was opposed. The 1st, 3rd, 4th and 5th Defendants filed a Statement of Defence and Counter-claim dated 14th October, 2019 in response to the averments made by the plaintiffs.
9. The 1st, 3rd, 4th and 5th Defendants denied all the allegations levelled against them and invited the plaintiffs to strict proof thereof. They denied the allegations of sale of the suit properties between the plaintiffs and the 2nd defendant, the subsequent subdivision of the land and registration as contained in paragraph 3 and 4 of the amended plaint and put the plaintiffs to strict proof thereof.
10. They further denied the allegations of trespass into the suit properties as contained in paragraphs 6, 6A and 7 of the amended plaint and put the plaintiffs to strict proof of the same.

11. It was therefore their contention that the orders sought in the amended plaint are unavailable to the plaintiffs.
12. In their counter-claim, it was the 1st, 3rd, 4th and 5th Defendants' claim that the plaintiffs have encroached on their portion of land covering about 5 acres and which they claim from them. They also sought a survey of the said parcel of land.
13. In conclusion, the 1st, 3rd, 4th and 5th Defendants urged the court to dismiss the plaintiffs' suit with costs and judgment be entered in their favor in respect of the counter-claim with costs.

Trial:

14. The Plaintiffs' case proceeded for hearing on 07.05.2025. The 1st and 2nd plaintiffs testified as PW1 and PW2 respectively and thereafter closed their case. The case proceeded ex-parte, in the absence of the defendants or their counsel, who despite being served and a return of service dated 30.01.2025 duly filed to that effect, failed to attend court on the hearing date.
15. The 1st plaintiff adopted her witness statements dated 17.03.2011 and 09.02.2024 as her evidence in chief.

16. She further stated that she purchased the suit land from the 2nd defendant on 04.05.2006, which sale was reduced into writing vide a sale agreement dated 04.05.2006. She produced the sale agreement as Pexh. 1.
17. It was also her testimony that the 2nd defendant took her to the Land Control Board where they obtained the requisite consent, which she produced as Pexh. 2. She produced the transfer form as Pexh. 3.
18. She went on to state that after that, she was issued with a title for land parcel No. Karuna/ Karuna Block 1 (Chebonet)/49 measuring 26.26Ha in her name. She produced the copy of the title deed as Pexh. 4.
19. It was her claim that she has filed the suit since the defendants who sold to them the suit property have trespassed on the land and harvested her crops without her consent. She thus urged the court to grant the orders sought of permanent injunction and costs of the suit.
20. The 2nd plaintiff adopted her witness statements diversely dated 17.03.2011 and 09.02.2024 as her evidence in chief.
21. It was also her testimony that she purchased the suit land vide a sale agreement dated 13.07.2007, which she

produced as Pexh. 5. She further stated that she was taken to the Land Control Board where they obtained a Consent to transfer. She produced the consent and the transfer form as Pexh. 6 and 7 respectively.

22. That after the transfer, she was issued with a title deed for parcel No. Karuna/ Karuna Block 1 (Chebonet)/52 measuring 4.047Ha in her name.
23. It was her claim that the defendants entered her land, ploughed it, planted and harvested and damaged her fence in the year 2011. She urged the court to grant her an order of permanent injunction against the defendants as well as costs of the suit. She informed the court that she is currently in occupation of the suit land.
24. The plaintiffs thereafter closed their case.
25. As earlier stated, despite being duly served with the hearing date and an Affidavit of Service duly filed to that effect, neither the defendants nor their advocate on record was in attendance for the hearing, and no explanation was tendered for their absence. This court thus proceeded to mark the defence case as closed.
26. Upon close of the defence case, I issued directions on the filing of final written submissions. The plaintiffs filed their

submissions dated 19.05.2025, which I have read and considered.

Analysis and Determination:

27. I have carefully considered the pleadings filed herein, the respective testimonies and exhibits produced by the plaintiffs and plaintiffs' submissions in totality and in my view the following issues arise for determination: -

- a. Whether the Plaintiffs are the absolute legal proprietors of the suit properties.*
- b. Whether the Plaintiffs are entitled to the reliefs sought in the Amended Plaint*
- c. Whether the Defendants' counter-claim is merited.*
- d. Who shall bear the costs of the suit*

a) Whether the Plaintiffs are the absolute legal proprietors of the suit properties

28. Sections 24, 25 & 26 of the Land Registration Act provides that a person will be considered as an absolute legal and registered proprietor, if the person holds a certificate of title issued by the Land Registrar. The certificate of title will be deemed as prima facie evidence of title and such person will be regarded as the absolute owner with all rights and privileges appurtenant thereto.

29. Section 26 of the Act further provides instances when such certificate of title may be challenged and/or impeached on grounds of fraud, misrepresentation or through a corrupt scheme in which the person was a party.
30. It is the plaintiffs' claim that they duly purchased the suit properties, individually from the 2nd defendant, that the sale transactions were reduced into writing vide sale agreements dated 04.05.2006 and 13.07.2007. They both settled the entire agreed consideration price respectively. They produced the said sale agreements as Pexhibits 1 and 5.
31. That consequently, they were accompanied to the Land Control Board for the requisite LCB Consent to transfer, which was obtained and produced as Pexhibits 2 and 6. The 2nd defendant thereafter gave them the duly filled transfer forms for purposes of effecting the transfer and registration of the purchased portions to their respective names. The said transfer forms were produced as Pexh.3 and 7.
32. The plaintiffs were thereafter registered as the absolute owners of the suit properties and a title deed duly issued in their favor. The said title deeds were produced as Pexh. 4 and 8 respectively.
33. Thus, as stated in section 26 of the Act, Pexh. 4 and 8 are conclusive evidence of proprietorship that the plaintiffs are

the absolute and indefeasible owners of the suit properties known as Karuna/ Karuna Block 1 (Chebonet)/49 and 52. The plaintiffs have demonstrated procedurally how they purchased and became the registered owners of the suit properties in support of their ownership claims.

34. They are therefore the absolute legal proprietors entitled to all the rights and privileges outlined under section 24 and 25 of the Land Registration Act to the exclusion of everyone else including the defendants herein.
35. Even though the defendants accused the plaintiffs of trespass and/or encroachment into a portion measuring 5 Acres of their land, no evidence was adduced to support such allegations or to challenge the ownership documents produced by the plaintiffs as Pexh. 4 and 8 as contemplated in section 26 of the Act.
36. Thus, in the absence of any evidence to the contrary, I find that the plaintiffs are the absolute, indefeasible, actual registered proprietors of the suit properties herein.

b) Whether the Plaintiffs are entitled to the reliefs sought in the Amended Plaint;

37. The plaintiffs in their amended plaint sought injunctive orders against the defendants jointly and severally together with costs of the suit. They urged the court to restrain the

defendants from entering, ploughing, planting or in any other manner interfering with the suit properties.

38. The governing principles for the grant of injunctions, whether temporary or permanent is now well settled and have been established by a long line of authorities. The Court of Appeal in the case of **Nguruman Limited vs. Jan Bonde Nielsen & 2 others [2014] eKLR** further opined that:-

“...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”

39. The question that therefore follows is whether the plaintiffs herein have satisfactorily established and demonstrated the three elements as outlined above.
40. On the issue of prima facie case, from the facts and circumstances of the case as outlined above, it is evident that the same has been sufficiently demonstrated. The plaintiffs have adduced evidence that they are absolute and indefeasible owners of the suit properties, entitled to all the exclusive rights and privileges appurtenant thereto.
41. No reasonable explanation and/or justification was tendered by the defendants for their acts of trespass and interference with the plaintiffs' peaceful possession and use of the suit properties. The defendants neither challenged the sale transactions and the subsequent procedures, impeached the title documents held in the names of the plaintiffs nor proved their allegations of trespass.
42. It is also my considered view that the plaintiffs have demonstrated the irreparable loss they are likely to continue suffering unless the defendants are permanently restrained from interfering with their possession and use of the suit properties. Being holders of valid certificate of titles, they are entitled to all exclusive rights and privileges that accrue from the said registration including a peaceful possession and use without any interference.

43. The third and final limb is on the balance of convenience. The facts and circumstances of this case as well as the evidence adduced in support of the plaintiffs' case certainly leaves no doubt on the mind of the court. But in the event that doubt would arise, the balance of convenience in my considered view lies in favor of the plaintiffs in granting the injunctive orders sought against the defendants jointly and severally.
44. In view of the foregoing, it is the finding of this court that the plaintiffs are entitled to an order of permanent injunction against the defendants. The plaintiffs have satisfactorily proved all the three elements to the required standard to warrant the grant of the said orders.

c) Whether the Defendants' counter-claim is merited;

45. The 1st, 3rd, 4th and 5th in their counter-claim averred that the plaintiffs had trespassed into a portion of their land measuring 5 Acres.
46. Trespass can be defined as the intrusion by a person into the land of another who is in possession and ownership Section **Section 3 (1) of the Trespass Act** provides that:

"Any person who without reasonable excuse enters, is or remains upon or erects any structure

on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.”

47. It is imperative to point out that the defendants did not attend court to prove their claim on trespass as alleged. It is trite that without any evidence, the allegations contained in a pleading are mere unsubstantiated claims with no proof and/or probative value.
48. Be that as it may, from the evidence tendered as exhibits, it is not in dispute that the plaintiffs are the registered owners of the suit properties. The process of acquisition of the suit land from the sale, to the application for the LCB consent and the subsequent registration has not also been challenged. It is further evident that Pexh. 4 and 8, which are the title deeds to the suit properties have never been impeached on the grounds contemplated under section 26 of the Land Registration Act.
49. The plaintiffs' entry and use of the suit properties cannot therefore be said to be without a reasonable excuse, justifiable explanation and or without the consent of the land owner to warrant a finding of trespass as alleged and as per the Act.
50. Further, I wish to point out that the 1st, 3rd, 4th and 5th defendants merely accused the plaintiffs of trespass without outlining when they discovered the said trespass or even prove the said trespass. The said allegations remain mere

unsubstantiated claims and an afterthought to sanitize their illegal invasion into the suit properties without a justifiable explanation.

51. In conclusion thereof, it is the finding of this court that the plaintiffs having satisfactorily proved their case are entitled to the reliefs sought in the Amended Plaintiff.

d) Who shall bear the costs of the suit;

52. A successful party should ordinarily be awarded costs of an action unless the court, for good reason, direct otherwise.
53. In this case, having held that the Plaintiffs have proved their case against the Defendants, I find that they are entitled to costs of the suit.

CONCLUSION:

54. The upshot of the above is that the Plaintiffs have proved their case against the defendants jointly and severally. Consequently, the Amended Plaintiff dated 14th September, 2012 is accordingly allowed on the following terms:-

- i. An Order of Permanent Injunction be and is hereby issued against the 1st, 2nd, 3rd, 4th and 5th Defendants, their agents, servants, employees restraining them from entering, ploughing, planting or in any other way dealing with the suit properties KARUNA/ KARUNA BLOCK 1 (CHEBONET)/49 and 52.**
- ii. The counter-claim by the 1st, 3rd, 4th and 5th Defendants be and is hereby dismissed.**

iii. Costs of the suit to be borne by the Defendants.

55. It is so ordered.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on **9TH day of OCTOBER, 2025.**

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of; -

Mr. Kiboi for Plaintiffs.

No appearance for Defendants.

Court Assistant - Laban

ORIGINAL