



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 220 OF 2013

ISAAC WAINI INANGA.....PLAINTIFF

VERSUS

TOM INZIANI.....DEFENDANT

JUDGEMENT

The plaintiff's case is that he is at all material times the registered proprietor of land parcel No. Kakamega/Ileho/681. The defendant has erected some houses on the plaintiff's said land and he is unlawfully occupying the same. The plaintiff's claim against the defendants is for eviction from the suit land and also for a permanent injunction restraining him from interfering with the said land or interfering with the same in any manner whatsoever. The plaintiff prays for judgment against the defendant for:-

- (a) Eviction.
- (b) Costs
- (c) Interest

PW1, the plaintiff testified that the defendant moved there in 1997. He was to buy a portion of the land but he refused. PW1 confirms that he lives in Nandi and not on the suit land. The defendant's mother is his sister and the defendant came to the land when his father died. The defendant came to the land in 1977 for the conducting of his mother's memorial. His mother was buried on this land.

The defendant, avers that he lawfully and justifiably took over exclusive occupation of the suit parcel of land in 1978 following lawful purchase of the same by the defendant's parents and the defendant has remained in the possession of the same to date. The defendant avers that even if the plaintiff's registered as the proprietor of the suit land the said registration is irregular bearing in mind that the said registration having been effected without regard to the interest of the defendant who was in actual occupation for a period of over 12 years. The defendant relied on the doctrine of adverse possession. The defendant testified that he has been residing there since 1978.

This court has carefully considered the evidence and submissions therein. 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. Hon Justice Munyao Sila 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 not in dispute that the plaintiff is the registered owner of land parcel No. Kakamega/Ileho/681. I have perused the title and find that the registration was in 1999. It is the defendant's evidence that he started living there way back in 1978. He has built his house there and also cultivates. PW1 confirms that he lives in Nandi and not on the suit land. The defendant's mother is his sister and the defendant came to the land when his father died. The defendant came to the land in 1977 for the conducting of his mother's memorial. His mother was buried on this land. I find that the defendant has beneficial interest on the said land and that the said registration is irregular bearing in mind that the said registration having been effected without regard to the interest of the defendant who was in actual occupation for a period of over 12 years. I find that the plaintiff has failed to prove his case on a balance of probabilities and I dismiss the same. As the parties are relatives there will be no orders as to costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 27TH DAY OF FEBRUARY 2019.

N.A. MATHEKA

JUDGE