



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC CASE NO. 107 OF 2012**

**SAULO ATILA AMUKAYA.....PLAINTIFF**

**VERSUS**

**AMUKOWA ATILA NDUKU.....DEFENDANT**

**JUDGEMENT**

The plaintiff avers that L.R. NO. BUTSOTSO/INDANGALASIA/338 is registered in the names of John Amukaya Chinjwi alias Amukaya Juma – now deceased having died on 22<sup>nd</sup> April, 1999 and forms part of his estate. The plaintiff avers that on or about 27<sup>th</sup> May, 2008, without any color of right and/or consent, the defendant trespassed upon L.R. NO. BUTSOTSO/INDANGALASIA/338 owned by the deceased herein John Amukaya Chinjwi alias Amukaya Juma and uprooted trees, planted sugarcane and other crops and remains there to date despite several demands that he vacates the land to the detriment of the estate of the deceased. In the premises, the plaintiff avers that the defendant is a trespasser upon the said land and an intermeddler to the estate of John Amukaya Chinjwi alias Amukaya Juma. Further, the plaintiff avers that on or about 27<sup>th</sup> May, 2008, without any justifiable reason, the defendant placed a caution in the Register of L.R. NO. BUTSOTSO/INDANGALASIA/338 claiming purchaser's interest which interest does not exist. The plaintiff's claim against the defendant, his agents, servants, assignees or anybody claiming through him in whatever manner is for an order of eviction from L.R. NO. BUTSOTSO/INDANGALASIA/338 and a permanent injunction restraining him, his agents, servants, assignees or any other person claiming through him in whatever manner from going back to the land. The plaintiff's other claim against the defendant is an order removing a caution placed on the register relating to L.R. NO. BUTSOTSO/INDANGALASIA/338. The plaintiff prays for judgment against the defendant, his agents, servants, assignees, or anybody claiming through him in whatever manner for:-

1. An order of eviction from L.R. BUTSOTSO/INDANGALASIA/338;
2. An order of permanent injunction restraining the defendant, his agents, servants, assignees, or anybody claiming through him in whatever manner from going back and/or trespassing or interfering in whatever manner with L.R. NO. BUTSOTSO/INDANGALASIA/338;
3. An order removing a caution lodged in the register in relation to L.R. NO. BUTSOTSO/INDANGALASIA/338;
4. Costs of the suit.
5. Any other or further relief this court deems fit and just to grant.

PW1, testified that he was the administrator of his father's estate one John Amukaya Chinjwi alias Amukaya Juma. The plaintiff testified that L.R. NO. BUTSOTSO/INDANGALASIA/338 is registered in the name of John Amukaya Chinjwi alias Amukaya Juma – now deceased having died on 22<sup>nd</sup> April, 1999 and forms part of his estate. The plaintiff testified that on or about 27<sup>th</sup> May, 2008, without any color of right and/or consent, the defendant trespassed upon L.R. NO. BUTSOTSO/INDANGALASIA/338 owned by the deceased herein John Amukaya Chinjwi alias Amukaya Juma and uprooted trees, planted sugarcane and other crops and remains there to date despite several demands that he vacates the land to the detriment of the estate of the deceased.

The defendant denies that on 27<sup>th</sup> May, 2008, he trespassed upon L.R. NO. BUTSOTSO/INDANGALASIA/338, uprooted trees, planted sugarcane and other crops and remains there to-date despite several demands that he vacates the land to the detriment of the estate of the deceased. The defendant admits that he registered a caution on L.R. NO. BUTSOTSO/INDANGALASIA/338 claiming purchaser interest and denies that the interest does not exist. DW1, the defendant testified that he bought the said piece of land L.R. NO. BUTSOTSO/INDANGALASIA/338 from John Amukaya Chinjwi alias Amukaya Juma in 1970 and has been residing there ever since. He produced the said sale agreement DEX1 as evidence.

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 registered owner of L.R. NO. BUTSOTSO/INDANGALASIA/338 is John Amukaya Chinjwi alias Amukaya Juma. The plaintiff produced the official search of the said suit land. Be that as it may, it is not in dispute that the defendant resides on the suit land. The defendant adduced evidence that he bought the said piece of land L.R. NO. BUTSOTSO/INDANGALASIA/338 from John Amukaya Chinjwi alias Amukaya Juma in 1970 and has been residing there ever since. He produced the said sale agreement DEX1 as evidence. I find his defence reasonable and I accept it. I find that the plaintiff has failed to prove his case on a balance of probabilities and I dismiss his case with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 26<sup>TH</sup> DAY OF FEBRUARY 2019.**

**N.A. MATHEKA**

**JUDGE**