



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERICHO

E.L.C CASE NO. 130 OF 2017

PETER NYAMONDIO ANCHINGA.....PLAINTIFF

VERSUS

FLORENCE M. OGERO.....1ST DEFENDANT

EVANS NJOROGE ANCHINGA....2ND DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff instituted this suit against the Defendants by way of a Plaint dated 30th November 2017. In the said Plaint the Plaintiff who is the registered proprietor of land parcel number KERICHO/MANRET/1198 avers that the 2nd Defendant fraudulently sold his land to the 1st Defendant thereby depriving him of the use and occupation thereof. The Plaintiff therefore seeks the following reliefs:

- a. An eviction order to remove the 1st defendant from land parcel number KERICHO/MANARET/1198
- b. Costs of this suit
- c. Any other relief that this court may deem fit to grant

2. Despite being served with Summons to enter appearance both Defendants neither entered appearance nor filed any Defence. The suit was therefore set down for hearing as an undefended suit.

3. The Plaintiff testified that he purchased the suit property from one Makori Ngare at a price of Kshs. 34,500 in 1991. He produced a copy of the sale agreement as Plaintiff's exhibit 1. He subsequently took possession of the land, fenced it and planted avocado trees. He stated that he had the intention of putting up his retirement home on the said property. He further testified that sometime in April 2017 he discovered that someone had deposited building materials on his land. Upon making enquiries, he learned that the building materials belonged to the 1st Defendant who claimed to have bought the parcel of land from the 2nd Defendant who is the Plaintiff's brother.

4. He then conducted a search at the Bomet Lands office where he discovered that the 2nd Defendant had fraudulently had the land registered in his name. He produced a copy of the Certificate of official search dated 7.7.2017. He wrote to the Land Registrar, Bomet complaining about the fraudulent registration of his land in the 2nd Defendant's name. The Land Registrar initiated investigations into the matter after which he summoned the 2nd Defendant and the Plaintiff to his office but the 2nd Defendant failed to attend. The Land Registrar subsequently revoked the 2nd Defendant's title and registered the suit land in the Plaintiff's name. The Plaintiff produced the correspondence exchanged between him and the Land Registrar. He also produced the title deed in respect of the suit land in his name.

5. The Plaintiff testified that despite the fact that the Defendants are aware that the suit land is now registered in the Plaintiff's name, the 1st Defendant has constructed a pit latrine on the said land and she intends to continue constructing other structures. This is what prompted the Plaintiff to file suit against the Defendants.

Issues for determination

- i. Whether the Plaintiff is the registered proprietor of L.R No. KERICHO/MANARET/1198

- ii. Whether the 2nd defendant fraudulently had the suit land registered in his name and unlawfully sold it to the 1st Defendant.
- iii. Whether the Defendants have trespassed on the suit land
- iv. Whether the Plaintiff is entitled to an order of eviction against the 1st Defendant.

6. With regard to the first issue, it was the Plaintiff's uncontroverted evidence that he is the registered owner of L.R No. KERICHO/MANARET/1198. He produced a title deed in respect of the suit land as his exhibit.

7. Section 25 (1) of the said Act further provides that:

“the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the 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 and claims whatsoever, but subject to any lawful encumbrances, set out in this section.”

8. Section 26 of the same Act provides that:

“the certificate of title issued by the Registrar upon registration, ort 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 indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except

a. on grounds of fraud, or misrepresentation to which 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.”

9. Since the Plaintiff's evidence was not challenged at the hearing, it is my finding the Plaintiff is the absolute proprietor of the suit property. He is therefore entitled to protection of the said title as provided for under the Land Registration Act No. 3 of 2012 and Article 40 of the Constitution.

10. Turning to the second issue, the plaintiff produced a Certificate of official search showing the that the 2nd Defendant had fraudulently had the suit land registered in his name on 24.6.2016 before he purported to sell it to the 1st defendant. The investigations conducted by the Land Registrar Bomet revealed that the said registration and sale were found to be illegal and were therefore cancelled.

11. With regard to the third issue, the Plaintiff testified that the 1st Defendant has trespassed on his land, deposited building materials and constructed a toilet. In view of my findings on the first 2 issues, it is clear that the 1st Defendant has no right to be on the suit land and is therefore a trespasser.

12. The upshot is that the Plaintiff has proved his case on a balance of probabilities. I therefore enter judgment for the Plaintiff and make the following final orders:

a. The 1st Defendant is hereby ordered to vacate the Plaintiff's land parcel known as Kericho/Manaret/ 1198 within 90 days from the date hereof failing which the Plaintiff may apply for an eviction order.

b. The costs of this suit shall be borne by the Defendants.

Dated, signed and delivered at Kericho this 26th of March, 2019.

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J.M.ONYANGO

JUDGE

In the presence of:

1. Mr. Bii for Mr. Rono for the Plaintiff
2. No appearance for the Defendants
3. Court Assistant: Mr. Rotich