



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 260 OF 2017

(Formerly Eldoret Hccc No. 260 of 2017)

LMM.....PLAINTIFF

VERSUS

JMT.....DEFENDANT

JUDGMENT

LMM, (*hereinafter referred to as the plaintiff*) filed this suit against JMT (*hereinafter referred to as the defendant*) stating that the plaintiff got married to the Defendant in the year 1988 under the Kikuyu Customary Law and stayed as wife and husband at Timboroa until 1994 when they moved to Eldoret where they settled. That the parties while staying in Eldoret town as wife and husband, engaged themselves in various businesses which enabled them to save money. In or about 1996, they bought a piece of land known as Eldoret Municipality/Block [xxxx] herein the suit land. That in the year 2005, the Defendant acquired a loan for Kshs.40,000/= from Imenti Agencies without the Plaintiff's knowledge and offered the property No. ELDORET MUNICIPALITY/BLOCK [xxxx] as security. The Defendant was unable to service/repay the loan and wanted to sell the suit land so as to repay the outstanding loan amount.

The Plaintiff entered into an agreement with the Defendant when she undertook to repay the said loan amount of Kshs.40,000/= that the Defendant had failed to pay Imenti Agencies on condition that the defendant does not sell the said parcel of land known as Eldoret Municipality/Block [xxxx]. The property aforesaid was to be transferred and registered in the name of the plaintiff. That in the year 2005, there arose a dispute over the suit Land between the Plaintiff and the Defendant which necessitated the filing of Eldoret High Court Civil Case No.24 of 2005 (OS) between the plaintiff herein and the Defendant and before the matter could proceed to hearing the defendant conceded the Plaintiffs claim and a consent was entered which was adopted as an order of the court on 28.11.2005 and the matter was marked as compromised. The effect of the consent was that the Defendant transferred all his rights and interest in the said parcel of land known as Eldoret Municipality/Block [xxxx] to the plaintiff and the property was subsequently registered in the name of the Plaintiff.

On or about the year 2012, the marriage between the Plaintiff and the Defendant was dissolved by the court in Eldoret Divorce Cause No. 35 of 2011. The court found out that the marriage between the plaintiff and the defendant had irretrievably broken down. That at the time the divorce case was going on, the defendant had long relocated to Timboroa his home. That ever since, the Plaintiff has lived on the suit Land, paid all statutory requirements and is the legal and/or registered owner of the land parcel number Eldoret Municipality/Block [particulars withheld] herein the suit land.

The plaintiff avers that the Defendant has threatened to illegally trespass on the said suit land Eldoret Municipality/Block [xxxx] by entering and remaining thereupon without permission and or consent from the Plaintiff and without any legal justification. That the continued trespass by the Defendant on the suit land is not only illegal and unlawful but also unfair and a Constitutional violation of the plaintiff appurtenant exclusive rights over the suit land. That the Defendant is a stranger on the suit Land and ought to be removed and permanently enjoined.

The plaintiff prays for an order of removal and/or eviction of the Defendant from the suit land and to permanently enjoin the Defendant and restrain the Defendant, his agents, servants, relatives and/or assignees from trespassing onto the said parcel of land and/or in any other manner interfering with the plaintiffs use and occupation of the suit land. The Officer Commanding Station, Langas Police Station to ensure compliance. Costs and interest incidental to the suit be borne by the defendant. The defendant did not file the defence and did not attend the hearing.

When the matter came for hearing, the plaintiff testified that he got married to the Defendant in the year 1988 under the Kikuyu Customary Law and stayed as wife and husband at Timboroa until 1994 when they moved to Eldoret where they settled. She states that while staying in Eldoret town with the Defendant as wife and husband, they engaged in various businesses which enabled them to save money. In or about 1996, they bought a piece of land known as Eldoret Municipality/Block [xxxx] herein the suit land.

That in the year 2005, the Defendant acquired a loan for Kshs.40,000/= from IMENT AGENCIES without his knowledge and offered the property No. ELDORET MUNICIPALITY/BLOCK [xxxx] as security. The Defendant was unable to service/repay the loan and wanted to sell the suit land at Kshs.40,000/= so as to repay the outstanding loan amount.

That he entered into an agreement with the Defendant when he undertook to repay the said loan amount of Kshs.40,000/= that the Defendant had failed to pay IMENT AGENCIES on condition that the defendant does not sell the said parcel of land known as Eldoret Municipality/Block [particulars withheld]. The property aforesaid was to be transferred and registered in his name.

That in the year 2005, there arose a dispute over the suit land between himself and the Defendant which necessitated the filing of Eldoret High Court Civil Case No. 24 of 2005 (OS) between himself and the Defendant. That before the matter could proceed to hearing, the defendant conceded his claim and a consent was entered which was adopted as an order of the court on 28.11.2005. The effect of the consent was that the Defendant transferred all his rights and interest in the said parcel of land known as Eldoret Municipality/Block [xxxx] to a stranger, to him and the property was subsequently registered in his name.

On or about the year 2012, the marriage between himself and the Defendant was dissolved by the court in Eldoret Divorce Cause No. 35 of 2011 found that the marriage had irretrievably broken down and decree nisi and absolute was issued. That he has lived on the suit land, paid all statutory dues and/or requirements and he is the legal and/or registered owner of the land parcel in issue.

The Defendant has illegally trespassed on his land Eldoret Municipality/Block [xxxx] by entering and remaining thereupon without his permission and/or consent and/or without any legal justification. The continued trespass by the Defendant on the suit land is not only illegal and unlawful but also unfair and a Constitutional violation of his appurtenant exclusive rights over the suit land. The Defendant is a stranger on the suit land and ought to be removed and permanently enjoined. This Honourable Court has jurisdiction to hear and determine this matter.

She prays for judgment against the Defendant for removal and/or eviction of the defendant from the suit land and an order of permanent injunction restraining the defendant, his agents, servants, relatives and/or assignees from trespassing onto the said parcel of land. the officer commanding station, Langas police station to ensure compliance. costs and interest incidental to the suit.

She produced the Decree Nisi and the Certificate of making the Decree Nisi absolute under Rule 36(4) of the National cases rules. The plaintiff further produced the consent dated 16.11.2004 whereby the defendant transferred all his interest in land parcel known as Eldoret Municipality Block [xxxx] (as per share certificate number [xxxx] dated 12.9.1996 issued by M/s Wareng Lands Limited to the plaintiff, LMM in consideration of the plaintiff settling the debt due from the defendant to M/s Imenti Agencies. The defendant was to facilitate the said transfer and ensure that the title deed and/or certificate of title would be issued directly in the name of the plaintiff. The suit was marked as compromised. The consent was recorded as an order of the court on 28.11.2005 and issued on 8.12.2005. The plaintiff has come to court because the defendant always threatens her. She has been paying for rates in respect of the property.

I have considered the pleadings, evidence on record and do find that the plaintiff has proved her case on a balance of probabilities that on the 16.11.2004, the plaintiff entered into a consent with the defendant and the Defendant do transfer all his rights and interest in the said parcel of land known as Eldoret Municipality/Block [xxxx] to the plaintiff and the property was to be subsequently registered in the name of the Plaintiff. The court order was given on 28.11.2005 and issued on 8.12.2005. The plaintiff has demonstrated that she is the beneficial owner of the said property. The defendant is not entitled to the same due to the aforesaid consent. I do grant judgment to the plaintiff in the following terms:-

(a) An order of removal and/or eviction of the defendant from the suit land.

(b) An order of permanent injunction restraining the Defendant, his agents, servants, relatives and/or assignees from trespassing onto the said parcel of land.

(c) The Officer Commanding Station, Langas Police Station to ensure compliance.

(d) No order as to costs this being a family dispute.

Orders Accordingly.

Dated and delivered at Eldoret this 22nd day of March, 2019.

A. OMBWAYO

JUDGE