



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 539 OF 2017**

**ERIC TIMOTHY BALONGO.....PLAINTIFF**

**VERSUS**

**PAUL SITEYA LOORKIPONY.....DEFENDANT**

**JUDGMENT**

By a Plaint dated the 15<sup>th</sup> March, 2017, the Plaintiff prays for judgement against the Defendant for:

- a) Vacant possession of LR. No. KAJIADO/ KISAJU/ 10733 by means of eviction order.
- b) Mesne Profits
- c) An order directing the Officer Commanding Station (OCS), Isinya Police Station and or the nearest Administration Police Post to supervise the execution of the ensuing eviction order.
- d) Interest on (b) above.
- e) Costs of the suit.

The Defendant though duly served as evidenced by the affidavit of service filed on 6<sup>th</sup> June, 2017 failed to enter appearance and file a Defence. Judgement in default of appearance was entered against the Defendant on 6<sup>th</sup> June, 2017 and the matter proceeded for formal proof.

The Plaintiff only called one witness.

**Evidence of the Plaintiff**

On 2<sup>nd</sup> August, 2016, the Plaintiff purchased land parcel number Kajiado/ Kisaju/ 10733 hereinafter referred to as the 'suit land', for Kshs. 33, 000, 000/=, through a public auction, conducted by Regent Auctioneers. The suit land was initially owned by the Defendant but he charged the same to Modyn Credit. After the auction, the suit land was subsequently registered in the Plaintiff's name and he was issued with a title deed to that effect. The Defendant has defiantly remained on the suit land despite numerous requests by the Plaintiff asking him to vacate. The Plaintiff sought court intervention for Defendant to grant him vacant possession of the suit land. He however abandoned his prayer for mesne profits.

The Plaintiff thereafter closed his case and filed submissions that I have considered.

**Analysis and Determination**

Upon perusal of the materials presented in respect of the suit herein, the following are the issues for determination:

- Whether the Plaintiff is entitled to vacant possession of the suit land.
- Whether the Defendant should be evicted from the suit land.
- Who should bear the costs of the suit.

As to whether the Plaintiff is entitled to vacant possession of the suit land. The Plaintiff tendered evidence to prove he purchased the suit land for Kshs. 33, 000, 000/= through a public auction. He was thereafter registered as proprietor of the suit land and issued with a title deed, which he produced as an exhibit. The Defendant who previously owned the suit land has declined to move from it, despite several requests

by the Plaintiff for him to do so. I wish to make reference to section 26(1) of the Land Registration Act which provides as follows”

**"The Certificate of title issued by the Registrar upon registration, or 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 and 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 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. '**

Further, Section 24 (a) of the Land Registration Act further stipulates as follows: ' **subject to this Act, the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.....'**

In the case of **Ahmed Ibrahim Suleiman and Another vs. Noor Khamisi Surur (2013) eKLR** where Justice J.M. Mutungi stated that ' **the Plaintiff having been registered as proprietor and having been issued with a certificate of lease over title No/ Nairobi/Block 61/69 are in terms of section 26(1) of the Land Registration Act entitled to the protection of the law'**.

Further in the case of **WILLY KIPSONGOK MOROGO v ALBERT K. MOROGO (2017) eKLR** where the Court held as follows: '**the evidence on record shows that the suit parcel of land is registered in the names of the Plaintiff and therefore is entitled to the protection under sections 24, 25 and 26 of the Land Registration Act.'**

From the legal provisions cited above, I hold that since the Plaintiff is the absolute proprietor of the suit land, he is entitled to all rights and privileges belonging or appurtenant thereto and hence entitled to protection of the law as envisaged in sections 24, 25 and 26 of the Land Registration Act. It is against the foregoing that I find the Plaintiff is indeed entitled to vacant possession of the suit land.

As to whether the Defendant should be evicted from the suit land. The Plaintiff claims the Defendant has declined to move from the suit land despite being asked to do so. Even though he was the previous owner of the suit land, once the suit land was sold to the Plaintiff, he lost his entitlement to the said land. Since he did not controvert the Plaintiff's allegations, I find that he is a trespasser who should hence be evicted from the suit land.

Who should bear the costs of the suit.

Since the Plaintiff has been inconvenienced with the Defendant's defiance to move from the suit land, I find that he is entitled to costs.

It is against the foregoing that I find that the Plaintiff has proved his case on a balance of probability and will proceed to make the following orders:

f) The Defendant be and is hereby directed to give vacant possession of LR. No. KAJIADO/ KISAJU/ 10733 to the Plaintiff within 90 days from the date hereon, failure of which an eviction order will issue.

g) The Officer Commanding Station (OCS), Isinya Police Station and or the nearest Administration Police Post be and is hereby directed to supervise the execution of the eviction order against the Defendant after 90 days from the date hereof.

h) The Costs of the suit is awarded to the Plaintiff

**Dated signed and delivered in open court at Kajiado this 6<sup>th</sup> day of March, 2019**

**CHRISTINE OCHIENG**

**JUDGE**