



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KERICHO**

**CIVIL SUIT NO.77 OF 2018**

**ELIZABETH CHEMUTAI CHEPKWONY.....PLAINTIFF**

**VERSUS**

**JANETH CHEPKOECH.....1<sup>ST</sup> DEFENDANT**

**JOHN IRINA MIRANGA.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. By a Plaint dated 9<sup>th</sup> October 2018, the Plaintiff instituted this suit against the Defendants claiming that they had trespassed on her land parcel number KERICHO/RORET/1090. In the said Plaint she seeks an order of eviction and a permanent injunction to restrain the Defendants from interfering with her proprietary interest in the suit land.
2. Despite being served with Summons to enter appearance, the defendants neither entered appearance nor filed any defence. The suit was therefore set down for hearing as an undefended suit.

**Plaintiff's Case**

3. The Plaintiff testified that she is the registered proprietor of land parcel No. KERICHO/RORET/1090. She produced a Certificate of Official search dated 25.9.2018 and a title deed in her name as plaintiff's exhibits 1 and 2 respectively. She relied on her witness statement dated 9<sup>th</sup> October 2018.
4. In her witness statement, the Plaintiff states that her son Robert Kiplangat Koech died in 2006 before getting married. Soon after his death, the 1<sup>st</sup> Defendant came to the Plaintiff's home claiming that the said Robert Koech had sired a son with her. She stayed for a while upto the year 2008 when she left for an unknown location. Later in 2014 she came back with other children and forcefully took occupation of the Plaintiff's land. She was later joined by the 2<sup>nd</sup> Defendant and they have been co-habiting on the suit land as man and wife. It is the Plaintiff's testimony that the Defendants have forcefully taken a portion of her tea plantation and they have been harvesting the same and earning income for their benefit. They have also been cutting down trees and selling them to unsuspecting neighbours. The Defendants have resisted the Plaintiff's demands for them to vacate the suit land and they have taken full control of the Plaintiff's land in total disregard of her proprietary interest therein.

**Issues for determination**

5. Having considered the Plaint and Plaintiff's submissions, the following issues emerge for determination:-
  - i) Whether the Plaintiff is the registered proprietor of the suit property;
  - ii) Whether the Defendants have trespassed onto the suit property measuring 2 acres;
  - iii) Whether the Plaintiff is entitled to the reliefs sought.

**Analysis and determination**

6. Section 24 of the Land Registration Act No 3 of 2012 provides as follows:

*“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.”*

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, 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 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. The Plaintiff testified that she is the registered owner of land parcel **L.R NO. KERICHO/RORET** as demonstrated by Plaintiff’s Exhibit 1 and 2. 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. The defendants have not demonstrated any lawful claim to the suit land whatsoever. The plaintiff is therefore entitled to protection of the said title as provided for under the Land Registration Act No. 3 of 2012. Additionally, Article 40 of the Constitution guarantees the property rights of every person and provides under Article 40(3) that:

*“No person shall be deprived of property or of any interest in or right over property of any description without prompt and just compensation being made to the person deprived of the property”.*

10. The second issue is whether the Plaintiff has proved that the Defendants trespassed onto his land. The Plaintiff testified that the defendants are occupying her land without her consent and they have adamantly refused to leave. In the case of **Nyangeri Obiye Thomas V Yunuke Sakagwa Nyoiza ELC Case No.277 of 2018** Okong’o J observed as follows:

Clerk & Lindsell on Torts 18<sup>th</sup> Edition at paragraph 18-01 defines trespass as follows:

*“Any unjustifiable intrusion by one person upon land in possession of another.”....Trespass is actionable at the instance of the person in possession and that proof of ownership is prima facie proof of possession”*

11. From the evidence on record, it is my finding that the defendants are unlawfully occupying the suit property. This amounts to trespass to land.

12. Regarding the third issue as to whether the Plaintiff is entitled to the reliefs sought, the Plaintiff seeks two remedies; a permanent injunction against the defendants and in default thereof an order of eviction against them. Having established that she is the proprietor of the suit land, the plaintiff is entitled to an order of eviction and an injunction against the defendants.

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

a) A permanent injunction is hereby issued restraining the Defendants from trespassing upon, ploughing or doing any other acts which are prejudicial to the plaintiff’s proprietary interest in land parcel number L.R No. **KERICHO/RORET/1090**

b) The Defendants are hereby ordered to vacate the suit property within 30 days from the date of service of the decree herein upon them failing which the Plaintiff may apply for an eviction order.

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

**Dated, signed and delivered at Kericho this 27<sup>th</sup> of June, 2019.**

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**J.M ONYANGO**

**JUDGE**

**In the presence of:**

1. Miss Ngetich for the Plaintiff
2. No appearance for the Defendant
3. Court Assistant – Rotich