



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

ELC NO 11 OF 2018

CHERUIYOT HENRY KIPTANUI.....PLAINTIFF

VERSUS

JAMES KOSKE.....DEFENDANT

JUDGMENT

(Suit by plaintiff seeking to restrain the defendant from interfering with the suit properties; plaintiff demonstrating that he is the registered proprietor; defendant not filing defence and not presenting himself during the hearing of the suit; plaintiff's evidence not controverted; judgment entered for the plaintiff)

1. This suit was commenced by way of a plaint which was filed on 22 January 2018. In his plaint, the plaintiff has pleaded that he is the registered owner of the land parcels Nakuru Municipality/Block 17/649 and 650 (the suit properties), having purchased the same from Samwel Kipkosgei Chepkwony and Moses Kiptogoch Kipkeo, the previous registered proprietors, in the year 2012. The two parcels of land adjoin each other. The plaintiff has pleaded that on 18 January 2018 he was constructing a boundary wall when the defendant came into the parcels of land and claimed to own them, and he chased away the construction workers. It is claimed that he also uprooted and carted away two signposts on the land. In this suit, the plaintiff seeks orders that he be declared the legal owner of the suit properties, an order to permanently restrain the defendant from the same, a mandatory injunction for the defendant to return the signposts that he took away, costs of the suit, and interest.

2. The defendant appointed counsel, M/s Cherutich & Company Advocates, who entered appearance on his behalf, but no defence was filed. On the hearing date, neither the defendant nor his counsel made appearance in court.

3. The plaintiff testified as the sole witness and produced the title deeds and search certificates for the suit land indicating that he is the owner of the suit properties. He also availed the certificates of title and search certificates of the previous owners. He further exhibited the sale agreement that he had with them and an approval issued by the County Government of Nakuru, allowing him to erect a boundary wall around the suit properties. He narrated that while his workers were fencing, the defendant came brandishing a gun and claimed ownership of the land, which forced his workers to flee. He stated that the signposts that the defendant carried away, cost him Kshs. 5,000/= each to put up, though he wanted them back.

4. The defendant did not call any evidence to rebut that of the plaintiff. I have no reason to doubt that the plaintiff is the owner of the suit properties as he has availed the Certificates of Lease and search showing that he is the proprietor. The defendant has not tabled anything which would show that he has any proprietary rights over the suit properties. As owner, it is the plaintiff who is entitled to enjoy the rights of proprietorship which are enshrined in Section 24 of the Land Registration Act, Act No. 3 of 2012, which provides as follows :-

24. Interest conferred by registration

Subject to this Act –

(a) 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; and

(b) the registration of a person as proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

5. It will be seen from the above that once a person is registered as proprietor, he is vested with the rights and privileges which such ownership carries. These rights include the right of ingress and egress and the right to exclusive use and possession. Having not demonstrated that he is entitled to the land, the defendant cannot be allowed to try and take possession of the land and neither can he seek to stop the plaintiff from constructing the boundary wall or interfere in the manner in which the plaintiff is using the land.

6. There is the prayer for mandatory injunction to compel the defendant to return the signposts that he picked up from the suit property. I do not know the whereabouts of these signposts and I do not want to make orders in vain just in case these signposts are not available. I will issue orders directing the defendant to return the same in the state that they were in when he collected them and if he cannot do so, then he will have to pay the sum of Kshs. 10,000/= which the plaintiff stated he used in making them. The plaintiff will also have the costs of this suit together with interest.

7. I thus enter judgment for the plaintiff and make the following orders :-

(i) That as between the plaintiff and defendant, it is hereby declared that it is the plaintiff who is the recognized proprietor of the land parcels Nakuru Municipality/Block 17/649 and Nakuru Municipality/Block 17/650.

(ii) That a permanent injunction is hereby issued stopping the defendant from entering, being upon, interfering with any construction, or in any other way, interfering with the plaintiff's use and possession of the land parcels Nakuru Municipality/Block 17/649 and Nakuru Municipality/Block 17/650.

(iii) The defendant is hereby directed to return the two signposts that he collected from the suit properties in the state that they were in when he picked them and if this is not possible, the defendant to pay the plaintiff the sum of Kshs. 10,000/= being the costs of the signposts.

(iv) The defendant will shoulder the costs of this suit together with interest at court rates.

8. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 30th day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. R.K Langat holding brief for Mr. Akang'o for the plaintiff.

No appearance on the part of M/s Cherutich & Company Advocates for the defendant.

Court Assistants- Nelima Janepher/Patrick Kemboi

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU