



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC CASE NO. 156 OF 2016**

**ERASTUS KIPCHUMBA ROTICH...PLAINTIFF**

**VERSUS**

**DAVID LANGAT.....DEFENDANT**

**JUDGMENT**

**(Plaintiff filing suit for vacant possession and permanent injunction against the defendant; plaintiff not being registered owner but purporting to have purchased the suit land from the previous owner and having title deed of previous owner; register of the land showing that the previous owner transferred the land to a different person and that person now being registered as proprietor; no search or green card to back up the title held by the plaintiff; no proof that plaintiff has acquired any proprietary rights; plaintiff's suit dismissed)**

1. This suit was commenced through a plaint which was filed on 5 May 2016. In the plaint, the plaintiff has pleaded that he is the legitimate owner of the land parcel Nakuru/Karao Settlement Scheme/785 (herein after referred to as "the suit land") . He has pleaded that in the year 2016 (date and month not specified), the defendant unlawfully and without any justifiable reason, laid a claim of ownership over the suit land and threatened to take vacant possession contrary to the proprietary rights of the plaintiff. In the suit, he has asked for orders to have the defendant permanently restrained from the suit land and in the alternative an eviction order against the defendant.

2. The defendant in her statement of defence pleaded that he is the lawful owner of the suit land and that he is in occupation and has developed the same. He pleaded that he has been in possession for the last 24 years and asked that the plaintiff's suit be dismissed with costs.

3. The plaintiff testified that he lives within Ngata in Nakuru and that he purchased the suit land from one Karen Chebet through a sale agreement dated 7 November 2006. The suit land is situated in Keringet, Tinet Sub-Location. The previous owner then gave him a title deed which he stated that he is in possession of. He was also given an allotment letter of the previous owner. He testified that when he went to take possession, he found a squatter by the name of Veronica Sum, who had planted trees and had put up a structure. He agreed to pay her Kshs. 40,000/= for the trees and the structure and they wrote an agreement. He then took possession of the two acres where the trees and the structure were located. The whole land is 6 acres and he stated that the other 4 acres are occupied by the defendant who has been in possession and planting potatoes. He asked him to move out but the defendant asserted ownership. He then reported to the OCS Keringet where the defendant promised to move out, but he failed to do so, which forced him to file this suit. He stated that he holds the original title deed but the same is yet to be transferred to him owing to a caveat.

4. Under cross-examination, he testified that he visited the land prior to purchasing it and that he also did a search. He however did not have any search which he blamed on the "caveat". He stated that when he visited the land in the year 2006, there was only one house belonging to Veronica, and the trees that she had planted. Veronica was a squatter, and she had no problem moving out, and he stated that they wrote the agreement for her to move out on 15 February 2016. He himself did not take possession until the year 2016. He testified that in the year 2006, the defendant was not in the land. He affirmed that the land is not fenced. He claimed that the defendant's parents have land about one kilometre away. He had no knowledge of the assertion by the defendant that he has been on the land for 24 years. He was also questioned on an alleged court order dated 31 May 2016 issued by this court and which purportedly led to the arrest of the defendant but he denied knowledge of it or knowledge of arrest of the defendant pursuant to the said order.

5. PW-2, in examination in Chief, testified that she is Karen Chebet and produced an allotment letter in her name and the original title deed. She stated that she sold the suit land to the plaintiff for Kshs. 700,000/=. She stated that when she sold the land Veronica was in possession. Her identity of PW-2 was doubted by the defendant who impressed that it was necessary for her to produce her ID card before she could be cross-examined. She had no ID card and the matter was adjourned to enable her an opportunity to present it. She however never came back to court and thereafter Mr. Ombati, learned counsel for the plaintiff, informed court that she had become elusive and he closed the plaintiff's case.

6. DW-1 was the defendant. He testified inter alia that he was born on the suit land in the year 1974. He stated that he has developed a house

on it and cultivates it. He stated that he does not know Veronica Sum and has not seen such person on the suit land. He also does not know Karen Chebet. He stated that on 21 November 2014, he was summoned at the offices of the DCIO, Kiptagich, by the plaintiff but nothing happened as the DCIO was not in on that day. He was summoned again in June 2016, where he was informed that he has disobeyed a court order which he produced as an exhibit. He was thus put in custody between 4 and 6 June 2016 (Saturday to Monday) when he was released and was not charged. He later came to learn that he had been arrested on a non-existent order. He stated that the area was demarcated in the year 1987 but some people who were not in occupation were given land and that there are many complaints. He stated that he has nowhere else to live if he is evicted. He questioned how PW-2 got title and pointed out that she did not even have an ID card.

7. Cross-examined, he acknowledged that he was 14 years in 1988 and was not allocated the land despite having sworn an affidavit to that effect on 4 July 2015. He however asserted that in the year 1992, his father built a house for him. He was challenged to put forth any document which shows that he is owner of the land but he had none.

8. DW-2 was one Daniel Kiptoo Rugut. He testified that he has known the defendant since childhood as his neighbour. He stated that he has never seen on the land anyone by the name of Karen or Veronica Sum. Cross-examined, he stated that he took possession of his own land in the year 1968 when the area was still a forest. He does not however have a title deed and he acknowledged to be a squatter.

9. DW-3 was Caleb Sunguti, the Land Registrar, Nakuru. He produced the Green Card of the suit land showing that it is registered in the name of Chebwogen Langat Maritim, who became registered as proprietor on 12 April 2013.

10. With the above evidence, the defendant closed his case.

11. I invited counsel to make submissions and they opted to file written submissions. I have taken note of these before arriving at my decision. In his submissions, Mr. Ombati, learned counsel for the plaintiff, inter alia submitted that the land is registered in the name of Karen Chebet and that his client purchased it. He pointed out that the defendant did not produce any document to show that he owns the land. He further submitted that the defendant is trying to rely on the doctrine of adverse possession but has no pleadings to that effect. Mrs. Mukira, learned counsel for the defendant, on the other hand, submitted inter alia that the plaintiff failed to produce in court the person who allegedly sold to him the suit land. She portrayed the plaintiff as a cunning and untrustworthy person, and referred me to the purported court order which was used to have the defendant arrested and detained over a weekend. She further pointed me to the evidence of the Land Registrar, that the suit land is registered in the name of Chebwogen Langat Maritim, and not Karen Chebet. She submitted that Karen Chebet had no valid title to the land and could not have passed any title to the plaintiff. He thought Karen Chebet to be a fraudster and reiterated that she failed to avail herself for cross-examination.

12. The case of the plaintiff is that he purchased the suit land from one Karen Chebet and he is therefore entitled to it. So far, he himself does not have a title deed in his name for the suit land, as he said that the land is under a caveat. The purported Karen Chebet, who sold to him the land, never came back to court after being challenged to produce her identity card and I have serious doubts if she was ever Karen Chebet. The Land Registrar, who testified on the ownership of the suit land, stated that the register of the said land reveals that the land is now registered in the name of Chepwogen Langat Maritim, who became registered as proprietor on 12 April 2013. The green card that was produced shows that one Karen A. Chebet owned the land but transferred it to Chepwogen Langat Maritim. The plaintiff has not stated who this Mr. Maritim is, and since he is currently registered as the owner of the land, I do not see how the plaintiff can succeed in his case. It is now the said Mr. Maritim, who as registered proprietor, is entitled to the suit land, unless and until it is held that his title is not a good title, which cannot be done in these proceedings. In as much as the plaintiff produced a purported title deed in the name of Karen A. Chebet, which purports to have been issued on 12 October 2005, he had no search and no green card to back up this title deed. Given the evidence of the Land Registrar, I doubt the authenticity of this title deed in the name of Karen A. Chebet for the record shows that she transferred the land to Mr. Maritim.

13. Having doubts on the authenticity of the title of Karen Chebet, I am not persuaded that the plaintiff has proved that he is entitled to the prayers in the plaint. He has not demonstrated to me that he has acquired any proprietary rights over the suit land. He has no title in his name and I am afraid to inform the plaintiff that he cannot get judgment based on the dubious title that is still purportedly in the name of Karen A. Chebet. That title is in serious doubt given that the name in the register is a different name from that in the title deed held by the plaintiff and it is quite telling that the person said to be Karen A. Chebet opted not to face the court when her identity was questioned.

14. For the above reasons, the plaintiff has failed to prove to the required standard that he has any proprietary rights over the suit land and his case is hereby dismissed with costs.

15. Judgment accordingly.

**Dated, signed and delivered in open court at Nakuru this 22<sup>nd</sup> day of July, 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT NAKURU**

**In presence of :-**

Mr. Konosi holding brief for Mrs. Mukira for the defendant.

No appearance on the part of M/s Ombati & Advocates, for the plaintiff.

Court Assistants: Nelima Janepher /Patrick Kemboi.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT NAKURU**