



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CASE NO. 502 OF 2017

JOSEPH LEDAMA SANKEI.....PLAINTIFF

VERSUS

JOHN KIPOTA KOISA.....DEFENDANT

JUDGEMENT

The Plaintiff has commenced the suit herein by way of a plaint dated 14th July, 2017 in which he sought the following orders:-

- (a) Declaration that the Defendant has no legal right or claim over the Plaintiff's parcel of land or a portion thereof and that the Plaintiff is the sole proprietor of Parcel no. Trans Mara/Olomismis/890.
- (b) Permanent Injunction against the Defendant, by himself, his agents or servants or any person claiming under him, from entering upon, remaining upon Parcel No. Trans Mara/Olomismis/890.
- (c) Costs of the suit.

It is the Plaintiff's contention that he is the registered owner of Land Parcel No. Trans Mara/Olomismis/890 as a sole proprietor and on grounds that on 9th January, 2017 the Defendant entered his land and attempted to take possession and that the said action has interfered with his occupation and enjoyment of his land and he thus seeks the aforesaid orders.

The Defendant was served with the Plaint but has failed to enter appearance and or file a statement of defence and consequently the court having satisfied itself that the Defendant was properly served the matter proceeded for hearing as uncontested.

The Plaintiff in his evidence stated that he is the owner of the suit parcel and the Defendant is his neighbour who owns Land Parcel No. Trans Mara/Olomismis/894.

The Plaintiff states that he purchased the suit land in the year 2000 and he has a title to the land which was produced as Plaintiff Exhibit No. 1. He stated that he bought the land from the Defendant who later came back to ask for more money after refusal he threatened to evict him.

Since the suit was not contested and facts of the case so clear what there is then for the court to determine is whether the Plaintiff has discharged the burden of proof and whether he is the registered owner of the suit parcel.

On ownership. The Plaintiff's testimony is uncontested and uncontroverted. He has produced a copy of title to the land which proves that he is the owner of the said parcel. Section 26 (i) of the Registered Land Act provides: -

“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.”

From the Plaintiff's testimony and the evidence produced I find that he is the lawful owner of Land Parcel Trans Mara/Olomismis/890 and that the Plaintiff has also established the grounds for the grant of an order of injunction.

The upshot of the above is that the Plaintiff has proved his case on a balance of probabilities and I thus enter judgement for the Plaintiff against the Defendant in the following terms.

(i) A declaration do issue that the Plaintiff is the sole proprietor and lawful owner of Land Parcel No. Trans Mara/Olomismis/890.

(ii) That a permanent injunction do issue restraining the Defendant from entering upon and remaining on land Parcel No. Trans Mara/Olomismis/890.

(iii) Costs to the Plaintiff.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **22nd** day of **July, 2019**

Mohammed Kullow

Judge

22/7/19

In the presence of: -

Ms Karia for the Plaintiff

N/A for the Defendant

CA:Chuma

Mohammed Kullow

Judge

22/7/19