



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

E & L NO. 957 OF 2012

CALEPH KIPKORIR BETT.....PLAINTIFF

VERSUS

JOSEPH WANJAU.....DEFENDANT

JUDGEMENT

By a plaint dated 6th September 2012 the plaintiff herein sued the defendant seeking for the following orders: -

- a. An order that the defendant demolishes the temporary structures he has put up in the suit parcel.
- b. Permanent injunction restraining the defendant by himself, his agents, servants, workers and those claiming through or under him from entering, occupying, remaining and working on land known as L.R 498/657 and in any dealing and/or interfering with the plaintiff's occupation of the same.

The defendant filed a defence and counterclaim on 6th February, 2018 by which he challenged the acquisition of the suit property by the plaintiff. He further pleaded that he has been staying on that parcel of land for over 50 years and therefore its subsequent acquisition was fraudulent, the particulars of which were set out in paragraphs 16 of the defence.

The defendant claimed for a permanent injunction against the plaintiff restricting him, his servants, agents or persons claiming through them from interfering, disposing off, or otherwise dealing with the property number L.R 498/657, a declaration that the defendant is the rightful owner of all that parcel of land known as L.R 498/657 and an order directing the Baringo Central Land Registrar to cancel and or rectify the title deed for all that parcel of land known as L.R 498/657 and register it to the rightful owner being the defendant herein after completing any required procedures.

Plaintiff's Case

PW1 testified that on 4th April, 1995 he wrote a letter to the Commissioner of Lands seeking for allotment of the land. The letter was produced as Pex 1. That he was issued with an allotment letter dated 6th May, 1995 which was produced as Pex 2. He stated that he paid Kshs. 24,540/ as stamp duty and survey fees and was issued with a receipt with an additional payment of Kshs. 8115/ as stamp duty. He was later issued with a grant in 20/1/2001. The grant and the official search were produced as Pexb 7.

It was his evidence that the Town Council Eldama Ravine gave him permission to proceed with the development through a letter dated 14/12/2005 which was produced as Pexb 8. Further, that he fenced and developed the plot, erected a gate and water and gave someone to plough the plot. In 2012, the defendant tampered with the fence and encroached on the property.

He further stated that the matter was reported to Eldama Ravine police station before filing the current suit. He produced a PDD No. 211309 on the grant which was contrary to the defendants which is PDD/KBK/12/VOL/1/39. It was his evidence he did not acquire the title fraudulently.

On being cross examined, he stated that he applied to the Commissioner of Lands to be allocated land which was vacant. Problems started in 2012 when the defendant destroyed his gate and the fence. The plaintiff therefore closed his case.

Defence Case

DW1 testified that he was not aware of the title number of the suit land. He produced various letters without establishing what they entailed.

It was his evidence that he has been staying on the suit since 1965 and that it was not true that he got into the land in 2012.

He prayed that the plaintiff's suit be dismissed and his counter claim allowed. On being cross examined, he stated that he did not have evidence that the land was registered in Eldama Ravine Town Council. He stated that he was not aware that a title was issued to the plaintiff and that the photos produced did not have dates. He further confirmed that on various occasion he had been asked to move out of the land through various letters.

Analysis and determination

The issues for determination are as to whether the plaintiff is the bona fide owner of the suit land and whether he is entitled to the orders sought for removal of structures on the suit land and order for injunction. Does the defendant's counterclaim have merit.

From the evidence adduced by the plaintiff and the documents produced it shows that the plaintiff has proprietary right in the suit land. The plaintiff gave a chronology of how he applied for a plot through the Commissioner of lands and the same was allotted to him vide an allotment letter dated 6th May 1986. The plaintiff further took court through the processes followed and produced the receipts for payment of stamp duty, survey fees, additional stamp duty the grant, official search, PDP letter of authorization for development from Eldama Ravine Town Council and certificate of registration.

The lease was executed on 20th September, 2001 and subsequently registered on 28th September, 2001 and as a result, the plaintiff asserts that he holds a good title to the suit land. The plaintiff has illustrated that he acquired the land for a valuable consideration and therefore under Section 25(1) the Land Registration Act, the rights of such a proprietor is indefeasible. What else would you need to prove ownership? There was no proof that the plot was acquired fraudulently as alleged by the defendant. I find that the plaintiff followed due process in the acquisition of the suit land.

It was the plaintiff's evidence that the defendant in 2012 trespassed on the said parcel of land and started constructing temporary structures thereon which action has denied the plaintiff his proprietary rights over the suit property.

The defendant in his submissions stated that he has been in occupation of the suit land since 1963 when his father moved in with the permission of the defunct Baringo County Council. The land christened Kokworwonim Informal Settlement Scheme was aimed at benefitting Baringo County Council Workers and their dependants.

From the evidence on record it is noted that the defendant is not a resident of the Kokorwonim Settlement scheme but Muberes more than 40 kilometers away and has never occupied the suit land. The defendant alleged fraud on the part of the plaintiff but fell short of proving that the plaintiff acquired the suit land fraudulently. Fraud is a serious allegation which must be specifically pleaded and specifically proved. A mere allegation of fraud cannot suffice.

The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

“Subject to this Act, 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.”

Section 26 (1) of the Land Registration Act states as follows:

“The Certificate of Title issued by the Registrar upon registration ... 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... 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.”

In the case of **Elijah Makeri Nyangw'ra –vs- Stephen Mungai Njuguna & Another(2013) eKLR** the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. Hon Justice Munyao Sila in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

‘the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme’.

The Plaintiff's Counsel in his submissions stated that by dint of section 24 of the Land Registration Act, the Plaintiff has demonstrated that he is the absolute and indefeasible owner of the suit property. The said section 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 thereof”

Regarding the issue as to whether the Plaintiff is entitled to the reliefs sought, the Plaintiff seeks one main remedy; a permanent injunction against the defendant.

The principles that guide the court in granting injunctions are well settled as set out in the case of **Giella V Cassman Brown & Company Limited 1973. E.A 358**. From the Plaintiff's evidence stated above, I find that he has met the threshold for the grant of an injunction. The plaintiff has proved ownership of land parcel No. LR NO. 498/657, which ownership was not obtained by fraud, the plaintiff is entitled to the rights of a registered absolute proprietor of a parcel of land.

Having considered the pleadings, the evidence and the judicial authorities I therefore enter judgment as prayed in favour of the plaintiff and order the defendant to demolish the temporary structures on the suit land and an order of a permanent injunction restraining the defendant from interfering with the suit land. The defendant to pay costs of the suit and the counterclaim is dismissed with costs.

DATED and DELIVERED at ELDORET this 11TH DAY OF DECEMBER, 2019.

M. A. ODENY

JUDGE

JUDGMENT read in open court in the presence of Mr.Mutai holding brief for Mr.Kibii for Plaintiff and Mr.Keter holding brief for Mr.Chege for Defendant.

Ms. Christine – Court Assistant