



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC NO. 51 OF 2017

WILLIAM MAKUTSA SIMON ONANI.....PLAINTIFF

VERSUS

SIMON AMUKOWA.....RESPONDENT

JUDGEMENT

The plaintiff case is that, he is the registered proprietor of land parcel number BUNYORE/ESHIANDUMBA/505. The plaintiff avers that he purchased land approximately 0.9 acres from the late Opakwa s/o Onani which was adjacent to their family land, he joined the purchased parcel with what his father had given him and registered it as parcel number BUNYORE/ESHIANDUMBA/505. The plaintiff avers that one Margaret Ayieko who is a mother to the defendant laid claim to land parcel number BUNYORE/ESHIANDUMBA/505 in the succession case No. 320 of 2012. The plaintiff further avers that the said Margaret died and her objection was not decided. The defendant in the year 2015 entered into the plaintiff's land and erected a house on land parcel No. Bunyore/Eshilandumba/505 despite the plaintiff's objections that he had no right whatsoever to the land. The plaintiff has demanded that the defendant leaves land parcel number BUNYORE/ESHIANDUMBA/505 but the defendant has refused and or neglected to vacate. The plaintiff avers that the defendant has no right to land parcel number BUNYORE/ESHIANDUMBA/505 and prays for an eviction order against himself, his agents, legal representatives and or employees. The plaintiff prays for an eviction order against the defendant, his agents, legal representatives and or employees from land parcel number BUNYORE/ESHIANDUMBA/505 and costs of the suit.

PW1 gave evidence that, he is the registered proprietor of Land parcel Number BUNYORE/ESHIANDUMBA/505 PEx1 is a copy of the title deed. This land form part of his inheritance from his late father Simon Onani. He also bought land measuring 0.9 acres from Opakwa and added it to what his father had given him. When registration was done both his inheritance and the purchased land were registered and given one number. The land is now known as BUNYORE/ESHIANDUMBA/505. During registration, the entire land was registered as one parcel which he continues to occupy todate. His late father gave his brother his portion of land W/BUNYORE/ESHIANDUMBA/506 and it was registered under the names of Amukowa Lunani. This is where the defendant's mother is buried. Amukowa Lunani had been given another land which he exchanged with one Otongo Ochina being land parcel Eshilandumba/W/Bunyore/512. The defendant has constructed a house on land parcel number Bunyore/Eshilandumba/505. He did so in 2015. He has pleaded with him to vacate but he has refused. The defendant never entered appearance nor did he file defence or attend court during the hearing.

It is not in dispute that the plaintiff is the registered proprietor of LR. No. BUNYORE/ESHIANDUMBA/505 and he has produced a copy of the title deed PEx1. 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.”*

This court in considering this matter referred to the case of **Elijah Makeri Nyangw’ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR** where 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 defendant has offered no defence and he did not attend the hearing of the case despite being served. I find that, the plaintiff has proved his case on a balance of probabilities. The certificate of title issued by the Registrar upon registration (PEX1) has been taken by this court 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 has not been challenged as evidence of fraud or misrepresentation to which the person is proved to be a party or evidence that the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme has not been adduced. I therefore grant the following orders;

1. The defendant herein is given 3 (three) months from today’s date to vacate the suit parcel better known BUNYORE/ESHIANDUMBA/505 and in default eviction order to issue forthwith.
2. Costs of this suit to the plaintiff.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 23RD DAY OF JANUARY 2018.

N.A. MATHEKA

JUDGE