



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L CAUSE NO. 81 OF 2017

ERNEST KIPKEMBOI LELEI.....PLAINTIFF

VERSUS

JACOB KIMUTAI.....1ST DEFENDANT

SHADRACK MELI.....2ND DEFENDANT

JUDGEMENT

By a plaint dated 24th February 2017 the plaintiff herein sued the defendants for:

- a) General damages for wanton destruction.
- b) Eviction from the suit land.
- c) Costs of the suit.

The defendants were served with summons to enter appearance together with a copy of the plaint and a verifying affidavit on 4th March 2017 but neither of them entered appearance nor filed a defense in this case. The plaintiff filed an affidavit of service sworn on 6th March 2017 by the process server to prove service.

The plaintiff later requested for judgement on 20th March 2017 but the Deputy Registrar ordered that he sets down the suit for formal proof with service to the defendants.

It was the plaintiff's case that he is the registered owner of parcel No. SOY/KIPSOMBA BLOCK 9 (KAPSUMBIYWET)/74 measuring 6.110Ha or thereabout. He stated that the defendants have encroached on his suit land since 2014. That the defendants have encroached on his 13 acres and are cultivating the land without his consent.

The plaintiff further testified that he instructed his lawyers to write a demand letter to the defendants but they refused to move out. He produced the demand letter dated 7/2/17 as exhibit No. 1. The plaintiff further produced a copy of title to the suit land registered in his name as exhibit No. 2. He stated that the defendants have denied him the use of his land and he has no land to cultivate. He prayed that the defendants be ordered to vacate the suit land and together with general damages and cost of the suit.

Analysis and determination

The issue to be determined by this court is as to whether the plaintiff has proved his case against the defendants on a balance of probabilities. The plaintiff gave evidence and produced a title to the suit land which is registered in his name. His evidence was not controverted by any other evidence. The fact that the suit land is registered in the plaintiff's name is prima facie evidence that he has proprietary rights in the suit land.

The law is clear on indefeasibility of title upon registration as per section 24, 25, and 26 of the Land Registration Act 2012.

Section 25 specifically provides that

"The rights of a proprietor whether acquired on first registration or subsequently for valuable consideration or by an Order of court shall not be liable to be defeated except as provided in this Act, and shall be held the proprietor together with all other interests and claims whatsoever"

Section 26 of the Land Registration Act 2012 further 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 conditions contained as endorsed in tile certificate and the title for 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, un-procedurally or through a corrupt scheme.”*

There was no evidence to question the authenticity of the plaintiff’s title, or whether the same was acquired fraudulently or through misrepresentation. If such was the case then the indefeasibility of title can be questioned under section 26 of the Land Registration Act.

The plaintiff prayed for general damages for trespass as the defendants had unlawfully denied him access and use of his property. Having determined that the defendants are trespassers, it follows that they should pay damages for trespass. It is trite law that trespass to land is actionable per se and therefore once it is proved, the plaintiff is under no duty to prove that he suffered any specific damage or loss. It is incumbent upon the Court to assess the reasonable damages to be awarded to the plaintiff. The court can take into account amongst other factors the length of time of illegal occupation, the nature of the trespass and whatever the trespasser was doing on the land. It should also be noted that the award of general damages is at the discretion of the court which must be exercised judiciously.

I have considered the plaintiff’s evidence together with the pleadings and the exhibits produced, and come to the conclusion that the plaintiff has proved his case against the defendants on a balance of probabilities.

I therefore enter judgement for the plaintiff against the defendants and make the following orders:

- a) That the defendants do give the plaintiff vacant possession of the suit land within 30 days upon service of this judgment or decree, in default of so vacating, an order of eviction be issued against the defendants from parcel of land No. SOY/KIPSOMBA BLOCK 9 (KAPSUMBIYWET)/74.
- b) An order that the defendants do pay to the plaintiff general damages for trespass assessed at Kshs. 200,000/.
- c) The defendants to pay the costs of this suit.

Dated and delivered at Eldoret on this 17th day of January, 2018.

M.A ODENY

JUDGE

Judgment read in open court in the presence of the Plaintiffs.

Mr. Koech – court assistant.