



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELC CAUSE NO. 172 OF 2015

SAMWEL MAKANA.....PLAINTIFF

-VERSUS-

CHARLES MINARO NYAMBASO.....1ST DEFENDANT

JOMA MOKUA.....2ND DEFENDANT

HENRY MARITA GOTI.....3RD DEFENDANT

JUDGEMENT

The Plaintiff filed the suit herein by way of a plaint filed in court on 31st March, 2015. In the Plaint, he avers that at all material times to the suit herein he was the registered owner of a parcel of land known as **WEST KITUTU/BOKINGOINA/2668** upon sub-division of original title No. **WEST KITUTU/BOKINGOINA/2667**. The Plaintiff avers that he purchased the parcel of land from the 1st Defendant and that the 2nd and 3rd defendant connivingly and jointly purported to be the beneficial owners of the land and illegally encroached on the land and put up an illegal structure thereon.

The Plaintiff avers that as a result of the Defendants' actions he suffered loss and damage and therefore seeks for an order of Permanent injunction, an order of eviction mesne profits and costs of the suit.

When the Defendants were served with summons they neither entered appearance nor filed their defences and the suit proceeded in their absence.

The Plaintiff in evidence stated that he purchased the suit land from the 1st Defendant and the land was subsequently transferred in his name and a title issued and he has in support of that claim produced a title deed issued on 29th July, 2009.

The Plaintiff further stated that he conducted a search prior to the purchase and the same showed that the 1st Defendant was the registered owner of the land and he produced a certificate of official search.

The Plaintiff also called the 1st Defendant as his witness and he testified that he sold a portion of his land in 2002 to the 2nd defendant but after he paid he refused to pay the balance and it was after this that he sold the land to the plaintiff. He further stated that the Deposit that the 2nd Defendant paid was refunded to him through the area chief.

I have heard the testimony of the Plaintiff and that of his witnesses. Their evidence remain uncontroverted and unchallenged. From the evidence before me it is not in doubt that the suit land previously belonged to the 1st Defendant who stated that he sold the same to the plaintiff and the land subsequently registered in the name of the Plaintiff. A title deed is prima facie evidence of ownership and in the instance case the same is unchallenged.

From the foregoing therefore I am satisfied that the Plaintiff has proved his case on a balance of probabilities and I therefore enter judgement for the Plaintiff against the Defendant in the following terms:-

(1) A permanent injunction do issue against the Defendant jointly and severally from trespassing, encroaching, and interfering with the Plaintiff's peaceful and quite enjoyment of the parcel of land known as WEST KITUTU/BOKINGOINA/2668.

(2) An order of eviction do issue against the Defendants from that parcel of land known as WEST KITUTU/BOKINGOINA/2668 after expiry of 60 days if they fail to voluntarily handover vacant possession to the plaintiff. In default the said eviction be carried out in accordance with the provision of section 152 (a) (b) (e) to (i) of land Act (Revised 2016)

(3) Costs of the suit

I will decline to award mense profit as the same as not been proved.

DATED, SIGNED and DELIVERED in open court at **KISII** on this **23rd** day of **February, 2018**

Mohammed Noor Kullow

Judge

23/2/18

In the presence of:-