



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

E.L.C CASE NO 93 OF 2016

KIPKOECH KIRUI ELKANA.....PLAINTIFF

VERSUS

VINCENT KIPRONO MUTAI.....DEFENDANT

JUDGMENT

Introduction

1. By a Plaint dated 6th December, 2016 the Plaintiff filed suit against the defendant seeking the following reliefs:

- a) A declaration that the Defendant's continued occupation and stay on the plaintiff's plot number KERICHO/ LITEIN/695 is unlawful and constitutes trespass
- b) An order compelling the Defendant by himself, his servants, agents and/or legal representatives to move out of the Plaintiff's plot in Litein
- c) Costs of this suit
- d) Any other of further relief that this Honourable court may deem fit to grant

2. The Defendant filed a Defence dated 12th January, 2017 but when the case was fixed for hearing he did not attend court despite being served with a hearing notice.

3. The Plaintiff testified that he is the registered proprietor of land parcel number KERICHO/LITEIN/695. He produced the title deed as an exhibit. He testified that in 2015 he leased his shop situated on the suit land to the defendant at a monthly rent of Kshs. 3000. The defendant paid the agreed rent until September 2016 after which he stopped. The plaintiff issued him with a termination notice but he refused to vacate and instead started claiming that he had been allocated the plot by the town council of Litein.

4. In order to clear the air, the plaintiff called a land surveyor who confirmed that the plot belonged to the plaintiff. The plaintiff testified that the defendant has erected two containers on his plot which he would like him to remove.

Issues for Determination

5. The following issues emerge for determination:

- i. Whether the plaintiff is the registered proprietor of land parcel number KERICHO/ LITEIN/695
- ii. Whether the defendant is unlawfully occupying the suit premises
- iii. Whether the plaintiff is entitled to the reliefs sought
- iv. Who should bear the costs of this suit?

Analysis and Determination

6. With regard to the first issue, it is the plaintiff's uncontroverted evidence that he is the registered proprietor of land parcel number

KERICHO/ LITEIN/695. He produced the title deed in respect of the suit property as an exhibit.

7. Section 24 of the Land Registration Act No 3 of 2012 provides as follows:

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.

8. Section 25 (1) of the said Act further provides that the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to any lawful encumbrances, set out in this section.

9. Since the plaintiff's evidence was not challenged at the hearing, it is my finding the plaintiff is the absolute proprietor of the suit property. He is therefore entitled to protection of the said title as provided for under the Land Registration Act No. 3 of 2012. Furthermore, Article 40 of the Constitution guarantees the property rights of every person and provides under Article 40(3) that no person shall be deprived of property or of any interest in or right over property of any description without prompt and just compensation being made to the person deprived of the property.

10. The second issue is whether the defendant is in lawful occupation of the suit land. The Plaintiff testified that he had notified the defendant to vacate the suit property after the termination of the lease but the defendant refused to do so. In the circumstances, it is my finding that the defendant has no right over the suit property and he is therefore occupying the same unlawfully. This amounts to trespass to land.

11. Regarding the third issue as to whether the Plaintiff is entitled to the reliefs sought, the Plaintiff seeks two main remedies; a declaration that the Defendant's continued occupation and stay on the plaintiff's plot number KERICHO/ LITEIN/695 is unlawful and constitutes trespass and an order of eviction against the defendant.

12. From the Plaintiff's evidence stated above, it is my finding that the Plaintiff has largely proved his case on a balance of probabilities. I therefore enter judgment for the Plaintiff and make the following final orders:

- a) That is hereby declared that the defendant's continued occupation of land parcel number KERICHO/ LITEIN/695 is unlawful and constitutes trespass to land.
- b) The Defendant is hereby ordered to vacate land parcel number KERICHO/ LITEIN/695 within three months from the date hereof failing which the Plaintiff may apply for an eviction order.
- c) The costs of this suit shall be borne by the Defendant.

Dated, signed and delivered at Kericho this 20th day of March, 2018.

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J.M ONYANGO

JUDGE

In the presence of:

1. Mr. Motanya for the Plaintiff
2. Defendant absent
3. Rotich – Court assistant