



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 465 OF 2014

PETER DAMMY SHAKAVA.....PLAINTIFF

VERSUS

PETER MAKHULU

JESCA PETER

JOHN MUKHULU LIMAKANDA..DEFENDANTS

JUDGEMENT

At all material times relevant to this suit, the plaintiff is the registered owner, absolute, of whole parcel of land better known as N/KABRAS/MALAVA/3389 measuring approximately 2 acres and/or thereabouts. The 1st and 2nd defendant have since the inception of the aforesaid parcel of land better known as L.R. N/KABRAS/MALAVA/3389, willfully, unlawfully, without justifiable cause of active permission, consent, colour of right and/or otherwise trespassed and/or encroached on the plaintiff aforesaid parcel of land thereby constructing a dwelling house. That on or about the 21st day of February, 2012, the 3rd defendant trespassed and/or encroached upon the plaintiff's parcel of land better known as L.R. NO. N. KABRAS/MALAVA/3389 and harvested the plaintiff mature sugarcane and delivered to West Kenya Sugar Co. Ltd. The plaintiff avers that the defendant action have deprived him of peaceful and quiet occupation of his parcel of land. The plaintiff claim against the defendants jointly and severally is for an order of permanent injunction restraining the defendant, their agents, servants and/or anybody acting for and/or on their behalf from interfering, trespassing and/or encroaching upon the plaintiff's parcel of land better known as L.R. NO. N. KABRAS MALAVA/3389. The plaintiff's further claim against the defendants jointly and severally is for an order of eviction of the defendants, their agents, servants and/or anybody acting for and/or on their behalf and demolition of the defendant's structures and/or dwelling house from the plaintiff, parcel of land better known as L.R. NO. N. KABRAS/MALAVA/3389. The plaintiff prays for judgment against the defendants jointly and solemnly for:-

1. An order of permanent injunction restraining the defendant, their agents, servants and/or anybody acting for and/or on their behalf from interfering, trespassing and/or encroaching and/or upon the plaintiff's parcel of land better known as L.R. NO. N. KABRAS/MALAVA/3389.
2. An order of eviction of the defendants, their agents, servants and/or anybody acting for and/or on their behalf and demolition of the defendant's structures and/or dwelling house from the plaintiff, parcel of land better known as L.R. NO. N. KABRAS/MALAVA/3389.

3. Costs of this suit.

4. Any other relief this honourable court may deem fit to grant.

PW1 testified that he is the registered owner, absolute, of whole that parcel of land known as L.R. NO. N/KABRAS/MALAVA/3389, measuring approximately 2 acres and/or thereabouts. He purchased the suit land from the 3rd defendant. All laid down procedures to acquire registration on the suit land were followed with the full knowledge of the 3rd defendant. That after acquiring registration upon the suit land the 1st defendant being the son of 3rd defendant constructed a residential house on it. The 2nd defendant's is wife to the 1st defendant. The action of the 1st and 2nd defendants has hindered his peaceful and quite occupation of his land. The 3rd defendant has even unlawfully harvested his sugarcane grown on the suit land and delivered the same to West Kenya Sugar Co. Ltd. He therefore seeks an injunction against the defendants. He also seeks for eviction and demolition of the defendants' houses, structures dwelling house from his land.

This court has carefully considered the plaintiff's case. The defendants were served but failed to attend court or file any defence. It is not in dispute that the plaintiff is the registered proprietor of LR. No. N/KABRAS/MALAVA/3389 and he has produced a copy of the title deed PEx 3. He also produced the sale agreement and the search certificate PEx 1 and 2. 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”.

It is the plaintiff's evidence that he is the registered owner, absolute, of whole that parcel of land known as L.R. NO. N/KABRAS/MALAVA/3389, measuring approximately 2 acres and/or thereabouts. He purchased the suit land from the 3rd defendant. All laid down procedures to acquire registration on the suit land was followed with the full knowledge of the 3rd defendant. That after acquiring registration upon the suit land the 1st defendant being the son of 3rd defendant constructed a residential house on it. The 2nd defendant's is wife to the 1st defendant. The action of the 1st and 2nd defendants has hindered his peaceful and quite occupation of his land. The 3rd defendant has even unlawfully harvested his sugarcane

grown on the suit land and delivered the same to West Kenya Sugar Co. Ltd. The defendants have unlawfully trespassed on his land. In the absence of any evidence to the contrary the plaintiff's title to the suit land was not obtained through fraud or misrepresentation. His certificate of title has been acquired legally, procedurally and not through a corrupt scheme. I find that the plaintiff has proved his case on a balance of probabilities and grant the following orders;

- a. An order of permanent injunction restraining the defendant, their agents, servants and/or anybody acting for and/or on their behalf from interfering, trespassing and/or encroaching and/or upon the plaintiff's parcel of land better known as L.R. NO. N. KABRAS/MALAVA/3389.
- b. The defendants, their agents, servants and/or anybody acting for and/or on their behalf are given six (6) months from today's date to vacate from the plaintiff's, parcel of land better known as L.R. NO. N. KABRAS/MALAVA/3389.
- c. Costs of this suit to the plaintiff.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 8TH DAY OF MARCH 2018.

N.A. MATHEKA

JUDGE