



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L CASE NO. 848 OF 2012

“FAST TRACK”

ALEXANDER SAKARI MAJANI.....PLAINTIFF

VERSUS

JOYCE AYUMA AGALOMBA.....DEFENDANT

JUDGMENT

By a plaint dated 16th April 2012 and amended on 16th May 2017 the plaintiff herein sued the defendant for an order of a permanent injunction restraining the defendant from trespassing into, wasting, cultivating, illegal occupation, interfering with or any other way or manner dealing with parcel number **Kakamega/Lumakanda/5360**. The plaintiff also prayed for an order of eviction of the defendant from the suit land together with costs of the suit.

This suit was dismissed for want of prosecution on 23rd March 2017 but was reinstated upon the Plaintiff satisfying the court that he was ready with his witnesses but went to the wrong court.

The matter came up for hearing when the plaintiff gave evidence in support of his case. The plaintiff stated that he is the registered owner of the suit land of which he produced a copy of the title deed to prove ownership. He further stated that he followed due process to get the title deed and took possession in 2008 after the subdivision had been done.

It was the plaintiff's evidence that the defendants trespassed onto his land in 2009 and started illegal construction prompting him to report the matter to the elders and the Chief. The matter was later escalated to the DO Lugari division who wrote letters to the defendants which he produced as exhibits before the court.

The DO directed the defendant to vacate but she refused to do so. The plaintiff stated that the DO later advised him to file a case in court as he did not have powers to issue eviction orders.

The plaintiff therefore prayed for the orders of a permanent injunction and eviction orders against the defendants. He also prayed for costs of the suit.

Plaintiff's Counsel's Submission

Counsel for the plaintiff filed written submissions and listed 4 issues to be determined by the court as follows;

1. Whether the Plaintiff is the lawful and bonafide owner of the suit property.
2. Whether the Defendant is a trespasser on the suit parcel of land.
3. Whether the Plaintiff is entitled to the prayers sought in the Amended Plaint.
4. Who is to bear the costs of this suit.

In response to issue number one, Counsel submitted that the plaintiff had proved that he is the lawful and bona fide owner of the suit parcel of land by tendering evidence together with exhibits to fortify the same. He submitted that the evidence and the documents produced by the plaintiff has not been controverted by any tangible evidence. The plaintiff produced a title deed registered in his name as an exhibit before the court and stated that he is in possession of the suit property.

Counsel further submitted that the Defendant is a trespasser on the suit parcel of land and that the Defendant failed to come to court despite being duly served. He stated that the defendant filed a defence but never attended the hearing of the suit. Counsel also stated that the Plaintiff having proved that he is the registered owner of the suit land suit land should be allowed to enjoy quiet possession to the exclusion of others. He therefore urged the court to grant the orders as prayed in the plaint with costs to the plaintiff as the defence filed by the defendant does not disclose any reasonable defence.

Analysis and determination.

The issues for determination in this suit are very clear. The plaintiff filed this suit against the defendants seeking for a permanent injunction and orders for eviction together with costs of the suit. The defendants were served with summons to enter appearance and filed a defence but never attended the hearing of the suit though they were duly served.

The issues for determination are as to whether the plaintiff is the rightful owner of the suit land and whether he is entitled to the orders sought plus costs of the suit. I have reviewed the evidence and the documents produced as exhibits in this case and I am of the view that the plaintiff has proved that he is the bona fide owner of the suit land. The plaintiff produced documents showing the process of acquisition of the suit land which culminated in the issuance of a title deed in his name. He is the indefeasible owner of the suit land as provided for under the Land Registration Act 2012.

There has been no question about the indefeasibility of the plaintiff's title as per sections 24, 24 and 26 of the land Act which allows the court to revoke the title if it is proven that the same was procured fraudulently, illegally or through misrepresentation. The defendants never gave any evidence to controvert the plaintiff's evidence.

I have considered the evidence on record, the documentation produced together with Counsel's submission and I have come to the conclusion that the plaintiff has proved his case to the required standard against the defendants.

I therefore enter judgment in favour of the plaintiff against the defendants in the following terms.

- a) An order of a permanent injunction is hereby issued restraining the defendant from trespassing into, wasting, cultivating, illegal occupation, interfering with or any other way or manner dealing with parcel number **Kakamega/Lumakanda/5360**.
- b) 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. **Kakamega/Lumakanda/5360**.
- c) Costs of this suit to be paid by the defendants.

Dated and delivered at Eldoret this 31st day of May, 2018.

M.A ODENY

JUDGE

Judgment read in open court in the presence of Mr. Rotich holding brief for Kagunza for Plaintiff and in the absence of the defendant.