



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**

**E & L CASE NO. 908 OF 2012**

**LILIAN CHEPCHIRCHIR ROTICH .....PLAINTIFF**

**VERSUS**

**RUTH JEMELI KIPLIMO.....1<sup>ST</sup> DEFENDANT**

**NORAH J. BIRGEN.....2<sup>ND</sup> DEFENDANT**

**J U D G M E N T**

**INTRODUCTION**

On the 1.8.2012, Lilian Chepchirchir Rotich (*hereinafter referred to as the plaintiff*) filed suit no. 163 of 2013 in the High Court of Kenya at Eldoret against **Ruth Jemeli Kiplimo** and **Norah J. Birgen**. This matter was transferred to the Environment and Land Court and file No. ELC No.908 of 2012 opened. Likewise, **Norah J. Birgen** and **Ruth Jemeli Kiplimo** filed suits 145 of 2012 and 150 of 2012 respectively against Lilian Rotich, Philip Kiptum Mego, Pius Rono, Joshua Mego, Francis Rono, and Pauline Jelimo. The two matters were transferred to the Environment and Land Court and file No. ELC No.900 of 2012(O.S) and 903 of 2012(O.S) opened. On the 27<sup>th</sup> of May 2013, the 3 matters were consolidated and the file no 908 of 2012 became the lead file hence proceedings were to be conducted in the matter. The plaints in suit no 900 and 903 of 2012 became counterclaims in this suit.

**PLAINTIFF'S CASE**

The plaintiff states that on the 19.4.2010, Honourable P. Mwilu issued certificate of confirmation of grant vide Eldoret High Court Succession Cause no. 194 of 1997 in the matter of the estate of Nyanyor Arap Mego and provided for the distribution mode of parcel number Nandi/Chepkongony/231 measuring 21 acres. This land was distributed equally amongst the deceased herein including the plaintiff pursuant of which she was apportioned 2.1 acres when upon transfer was registered in the name as Land parcel Nandi/C/1171.

Upon being shown boundaries of her land, she realized that the defendants occupy a portion of the same. The plaintiff states that though the defendants were objectors in the succession cause, the honorable Court did not find merit in their claim. Efforts to make the defendants willfully vacate has been futile.

The plaintiff therefore seeks orders that the suit parcel belongs to the plaintiff and the defendants continued occupation of the same is unlawful and that the defendants should be evicted from the suit parcel of land. Moreover, the plaintiff prays for an order of injunction barring the defendants from interfering with the parcel of land upon grant of the prayer for eviction.

**DEFENDANTS, DEFENCE AND COUNTERCLAIM**

The defendants filed a statement of defence stating that the mother title No. Nandi/Chepkongony/231 was registered in the names of Nyanyor Arap Mego. The 1<sup>st</sup> defendant bought a portion of land measuring 1 acre or thereabout and took immediate possession in 1997. The 2<sup>nd</sup> defendant bought 4.3 acres and took possession in 1999 from the later Evelyne Cheboo, the widow of the late Nyanyor Arap Mego.

They claim to have been in active possession of the land since 1997 and 1999 respectively to date to the exclusion of the plaintiff and have extensively developed their respective portion of the said land. They claim that the plaintiff's rights were extinguished by operation of the law. The defendants aver that they had filed suits no. Eldoret High Court Civil Case No. 145 of 2012 and Eldoret High Court Civil Case No.150 of 2012 prior to the institution of the suit herein and prayer for consolidation of the suits. On the 27.3.2013, the three suits, thus, ELC No. 900 of 2012, 903 of 2012 and 808 of 2012 were consolidated and proceedings ordered to be conducted in ELC No. 908 of 2012. (900 of 2012 and 903 of 2012 were regarded as counter claims).

The defendants in their Originating Summons in 900 of 2012 and 903 of 2012 state that they have acquired the title to the land Nandi/Chepkongony/231 measuring 4.3 acres for Norah Birgen and 1 acre for Ruth Jemeli Kiplimo. The land is now subdivided to create

titles no Nandi /Chepkogony/1167/ 1169/ 1170/ 1171/1172/1173/1174/1175 and 1176 and that the plaintiffs hold title in trust for the defendants as they are entitled to the property by virtue of adverse possession. According to the defendants, the title of the plaintiffs became extinguished 12 years after the defendants took possession. They pray that their various portions be carved out and that they be registered as the proprietors.

### **PLAINTIFFS' EVIDENCE**

When the matter came up for hearing, Lilian Chepchirchir Rotich, the plaintiff testified that she stays at Kaptumo and is a farmer by profession and Nyanyor Arap Mego was her father. That they did succession of her father's land in Eldoret High Court succession cause.No.194 of 1997. The grant was issued on 19.4.2010 whereupon she was given 2.1 acres on confirmation of grant and transfer by transmission when her deceased father's land was distributed to the heirs. She produced the grant as P.Ex.1. She further states that her land came out as Nandi/Chepkongony/1171. She produced the title as P. Ex.2. That her plot is occupied by Ruth Jemeli Kiplimo and Noah J. Birgen who claim that they bought the plot from her mother. They filed objection in the succession cause at Eldoret HC.No.194 of 1997. She produced the objection application as P.Ex. 3.

Henry Kiprono Burgen bought the land in 2004 from Everlyne Cheboo Tuiyo. Ruth Jemeli Kiplimo bought the land in 2004 from Sally Chekorir Tuiyo. She states that the purported sale of the property of Nyanyor Arap Mego was unlawful and illegal as he was deceased at the time of sale and prays that the defendants be evicted. On the prayer in the consolidated case by the defendants that they be allowed to stay in the land because they had been in occupation for more than 12 years, she states that their being in the land for 12 years is of no consequence as the title was not in her name and that they bought the land when the title was registered in her father's name. She prayed that the suit be allowed.

On cross examination by Mr. Osango, she states that she is the administratrix of the estate of the deceased Nyanyor Arap Mego since 2004 but the succession cause was commenced by Sally Chekorir who is now deceased. Sally Chekorir sold part of the land to Norah Birgen who has lived there for long. There are other buyers who are not in court. On re-examination by Mr. Kipnyekwei she states that she is claiming the land after determination of the succession cause and as the registered proprietor as people are occupying her land.

### **DEFENDANTS EVIDENCE**

After the close of the plaintiff's case, the defence opened its case with the evidence of

DW1, Nora Birgen who states that she lives at Kipletita village Kiptumo sublocation Nandi County engage in life as a farmer. She filed defence on 28.9.2012 and filed an affidavit on record on 5.7.2012. She urges the court to look at the affidavit, statements and documents in her possession. She produced a green card for land Nandi/Chepkongony 231 as D.Ed.1. She had photos of her home and produced them as D.Ex.2 (a)- 2(d).

She is the widow to Henry Kiprono Birgen. She did succession and got a grant in respect of the estate of Henry Kiprono Birgen. She produced a copy as D.Ex.3. According to DW1, land Nandi/Chepkongony 231 was registered in the name of Nyanyor Arap Mego and was bought by Henry Birgen. The agreement was between Henry Birgen and Everlyn Chebutuyo while the title was still in the name of Nyanyor Arap Mego. They set up their home on the land and have occupied the same openly, peacefully, continuously, uninterrupted and that her husband was buried on the land.

The entire family resides on the entire portion of land and have planted tea, bananas, exotic trees, maize and have also used the land for dairy farming. DW1 claims adverse possession of the portion she occupies.

**DW2, Ruth Chemeli Kiplimo**, a farmer a farmer by profession states that she filed case No. 150 of 2012 (OS) and that she relies on her statement in this case and affidavit in the originating summons. She relied on green card of parcel no. Nandi/Chepkongony/231 that was registered in the name of Nyanyor Arap Mego. She states that she bought one acre of the suit land on the 1.8.1997 from Evelyne. She produced a copy of the agreement as D.Ex.4.

She states further that she bought a portion of the said land measuring 1 acre or thereabouts vide a written agreement dated 1.8.1997 and took immediate possession thereof in 1997. She has set up her home on the said original parcel of land and have since then occupied the said parcel of land openly, peacefully, continuously uninterrupted. Her said portion of land has clearly defined boundaries separating it from the rest of the land. That it is within her home that she and members of her nuclear family reside on the said land. She has extensively developed the said portion of land since they took possession and occupied the same in 1997.

She has put the entire portion of land under tea plantation, banana stems, exotic trees and a portion of it is used for subsistence farming i.e. maize, beans and dairy farming. That to the best of her knowledge, information and belief all her neighbors know and regard her as the owner of the suit land and that vide Eldoret High Court Succession Cause No. 194 of 1997, the plaintiff herein and another in their capacity as Administratrixes of the estate of the late Nyanyor Arap Mego moved the High Court for orders on how to administer and distribute the estate of the deceased among all the beneficiaries and purchasers but unfortunately her rights and that of other purchasers was not catered for in the said cause.

On 16.5.2005, the late Sally Chekorir Tuiyo then one of the Administratrix of the estate of the late Nyanyor Arap Mego reached a compromise between her late husband Henry Kiprono Birgen during his life time that all persons who had purchased interests in the land parcel known as Nandi/Chepkongony/231 on how the estate was to be distributed to cater for the interests of purchasers. That she has since filed her case in Eldoret Hccc No. 150 of 2012 against the plaintiff herein and 4 others claiming her interest in the said parcel of land by way of adverse possession and the same is pending hearing and final determination. She has been advised by her lawyers on record which advice she verily believe to be true that the plaintiff's suit herein is statutory time barred and has been extinguished by operation of the law by virtue of her occupation of the said land for a period exceeding 12 years.

She has sought and obtained legal counsel and have been advised by her lawyers on record which advice she verily believes to be true that change of titles does not affect her claim based on adverse possession.

**DW3** introduced himself as Julius Metto who states that he at Kipletit at Kaptumo location in Nandi County. He is a farmer by profession. He states that the plaintiff is an adopted daughter to the late Everlyne Cheboo Tuiyo, a widow to the deceased Nyanyor Arap Mego and the defendants are buyers. That Everlyne Cheboo Tuiyo was barren not blessed with a child of her own and she married Sally Chepkorir Tuiyo (woman to woman marriage) who bore her children including the plaintiff herein in accordance with Nandi Customary law. That he knows that the original title No. Nandi/Chepkongony/231 was registered in the names of the original proprietor, the late Nyanyor Arap Mego.

In 1999, he witnessed a land sale agreement between the late Everlyne Cheboo Tuiyo and the late Henry Kiprono Birgen as the village elder. That he is aware that the late Henry Kiprono Birgen who was the husband of the 2<sup>nd</sup> defendant herein Norah J. Birgen bought a portion of land measuring 4.3 acres or thereabouts and they took immediate possession thereof in 1999. That they set up their home on the said original parcel of land and have since then occupied the said parcel of land openly, peacefully, continuously uninterrupted to date. That the said portion of land has clearly defined boundaries separating it from the rest of the land.

He further states that their entire family members are settled on the said land. That the late Henry Kiprono Birgen died on 24<sup>th</sup> April, 2009 and was buried on the said land without any objection from any one. They have extensively developed the said portion of land since they took possession and occupied the same in 1999 and they have set up permanent home on the said portion of land.

On 1.8.1997, he also witnessed a land sale agreement made between the 1<sup>st</sup> defendant Ruth Chemeli Kiplimo and the late Everlyne Cheboo Tuiyo, a widow of the deceased Nyanyor Arap Mego. That Ruth Chemeli Kiplimo bought a portion of land measuring 1 acre from Everlyne Cheboo Tuiyo, a widow of the deceased Nyanyor Arap Mego where she also established her home in 1997.

Both the defendants have put their respective portions of land under tea plantation, banana stems, exotic trees and for subsistence farming i.e. maize, beans and dairy farming. That all along, he has known the defendants to be the owners of their respective portions of land. On 16.5.2005, he attended a meeting held among the families of the parties herein and an agreement was reached on the mode of sharing the said land. That lately, he was informed that the said original parcel of land has changed titles and registered in the names of the beneficiaries of the late Nyanyor Arap Mego and excluded the defendants herein.

**DW4, David Rotich** stated that he stays at Kaptumo location in Nandi County. He was an elder in a village Nandi County since 1985 to date and had come to give evidence on behalf of the Defendants. According to this witness, the plaintiff is an adopted daughter to the late Everlyne Cheboo Tuiyo, a widow to the deceased Nyanyor Arap Mego and the defendants are buyers.

He corroborates DW3 that Evelyne Cheboo was barren not blessed with a child of her own and she married Sally Chepkorir (woman to woman marriage) who bore her children including the plaintiff herein in accordance with Nandi Customary law.

The original title No. Nandi/Chepkongony/231 was registered in the names of the original proprietor, the late Nyanyor Arap Mego. In 1999, he witnessed a land sale agreement between the late Everlyne Cheboo and the late Henry Kiprono Birgen as a village elder. He is aware that the late Henry Kiprono Birgen who was the husband of the 2<sup>nd</sup> defendant herein Norah J. Birgen bought a portion of land measuring 4.3 acres or thereabouts and they took immediate possession thereof in 1999. They set up their home on the said original parcel of land and have since then occupied the said parcel of land openly, peacefully, continuously uninterrupted to date. The said portion of land has clearly defined boundaries separating it from the rest of the land. That their entire family members are settled on the said land.

The late Henry Kiprono Birgen died on 24<sup>th</sup> April, 2009 and was buried on the said land without any objection from any one. That they have extensively developed the said portion of land since they took possession and occupied the same in 1999 and they have set up permanent homes on the said portion of land. That on 1.8.1997, he also witnessed a land sale agreement made between the 1<sup>st</sup> defendant, Ruth Chemeli Kiplimo and the late Everlyne Cheboo a widow of the deceased Nyanyor Arap Mego.

That Ruth Chemeli Kiplimo bought a portion of land measuring 1 acre from Everlyne Cheboo, a widow of the deceased Nyanyor Arap Mego where she also established her home in 1997. That both the defendants have put their respective portions of land under tea plantation, banana stems, exotic trees and for subsistence farming i.e. maize, beans and dairy farming. That all along, he has known the defendants to be the owners of their respective portions of land.

On 16.5.2005, he attended a meeting held among the families of the parties herein and an agreement was reached on the mode of sharing the said land. That lately, he was informed that the said original parcel of land has changed titled and registered in the names of the beneficiaries of the late Nyanyor Arap Mego and excluded the defendants herein. He also knows that there are other buyers who bought land from Everlyne Cheboo Tuiyo and are all occupying the said land peacefully.

#### **SUBMISSIONS BY THE PLAINTIFF**

The plaintiff submitted that she is the registered owner of land parcel number Nandi/Chepkongony/1171 measuring 2.1 acres. She produced a title deed confirming the same. The suit land is a product of N/C/231 which was registered in the name of the plaintiff's deceased father Nyanyor Arap Mego who died on 15.5.1997. The family filed succession cause number 194 of 1997 pursuant to which a certificate of confirmation of grant was issued on 28.3.2010.

The certificate of confirmation of grant provided that all heirs to be apportioned 2.1 acres of parcel Nandi/Chekongony/231. The plaintiffs further submit that Prior to determination of the said succession cause, the Defendants herein sought to revoke grants issued to Everlyne cheboo Tuiyo (now deceased) allegedly because the said Everlyne Cheboo sold them portions of the deceased's NANDI/CHEKONGONY/231 in her capacity as the Administrator of the deceased's estate.

That despite having been sold the said portions of land, the said Everlyne Cheboo failed to state them in the succession cause as interested parties and that upon hearing their application, the succession court judge ruled that the Defendants herein had no capacity to seek the orders as prayed because the then Administrator did not have the capacity to dispose of the deceased estate without an order of the court.

The court further held that the only option available to the Defendants herein was to seek appropriate orders against Everlyne Cheboo in her person.

The Defendants did not appeal against the decision of the succession court, neither did they take any other remedial measures before the succession court could fully distribute land parcel NANDI/CHEPKONGONY/231 amongst the heirs of the deceased registered owner.

The plaintiff submits that when it became known to the Defendants herein that the estate had filed a succession cause, they should have stayed the succession proceedings then file a suit seeking for orders that they were entitled to a portion of the suit land. And if successful, present the decree for enforcement in the succession court. The suit land parcel NANDI/CHEPKONGONY/1171 is a product of a court order on how the deceased's estate should be distributed. The Defendants have not sought to set aside the certificate of confirmation of grants issued in March 2010.

Further, the plaintiff submits that her land is only 2.1 acres. The Defendants claim a combined area of 5.2 acres which is clearly impossible to locate within the plaintiff's suit land.

The physical area under the Defendants occupation was not surveyed. There is no report from a surveyor showing the boundaries and acreage under the occupation of each of the Defendants herein. The plaintiff submits that she has clearly demonstrated that land parcel NANDI/CHEPKONGONY/1171 measures 2.1 acres and is a creature of an order issued by a succession court in the High Court of Kenya at Eldoret.

### **SUBMISSIONS BY DEFENDANTS**

The defendants submit that the plaintiffs cannot succeed in her claim because the same is statutory time barred given that both the Defendants have been in actual possession since 1997 and 1999 respectively a period exceeding twelve years. The Defendants have remained in occupation and utilization of their respective portion to date.

This was in the knowledge of the plaintiff who did nothing prior to the expiry of the expiry of twelve years by seeking appropriate orders for their eviction.

They seek guidance from the provision of section 7 of the Limitation of Actions Act Cap 22 laws of Kenya.

It provides: ***"An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or if it first accrued to some person through whom he claims to that person."***

The defendants submit that the plaintiff was substituted as the administratrix of the estate of Nyanyor Arap Mego whilst they bought the property in 1999 and got registered as the proprietor of the suitland in 2012 and therefore the change of title does not affect adverse possession.

### **ANALYSIS AND DETERMINATION**

This court had considered the pleading evidence on record and does find that the plaintiff is the registered proprietor of the suit land having been transmitted to her as a beneficiary of the estate of the deceased Nyanyor Arap Mego who died on 13.5.1997. The background of the matter is that land registration no. NANDI/CHEPKONGONY/231 measuring 21.0 Acres was registered in Registry Map sheet no.18 on the 8.10.1969 in the name of Nyanyor Arap Mego. He was registered as the absolute proprietor of the said land. On the 1.11.2004 the same was registered in the names of Everlyne Cheboo Tuiyo and Sally Jepkorir Tuiyo and administratrixes of the Estate of the deceased Nyanyor Arap Mego.

On the 10<sup>th</sup> May 2010, the properties were registered in the names of Pius Rono Joshua Mego, Sally Chepkorir Tuiyo, Lilian Chepchirchir Rotich (Plaintiff) Francis Rono, Pauline Jelimo, Gladys Chelgat (Minor), Carolyne Jepkosgei (Minor), Philip Kiptum Mego (Minor), David Kiprotich (Minor). For the minors, their property was to be held in trust until age of maturity. On 2<sup>nd</sup> June 2010, a title deed was issued and on the 21<sup>st</sup> May 2012, the title was closed on partition and new numbers thus Nandi/Chepkongony 1167 to Nandi/Chepkongony 1176 were created.

The plaintiff produced the certificate of confirmation of grant dated 19<sup>th</sup> April 2010. The plaintiff further produced the title deed as evidence that she was registered absolute proprietor of Nandi/Chepkongony/1171.

It is worth nothing that in succession cause no. 194 of 1997, the grant issued on 21.10.1999 to Everlyne Cheboo Tuiyo and Sally Jepkorir Tuiyo was revoked and they were removed as administratrixes of the estate of the deceased Nyanyor Arap Mego and substituted with Lilian Chepchirchir Rotich (Plaintiff) and Ibrahim Kiplimo Chepkirui was later substituted with Sarah Chebet on the 15.3.2010, the grant issued to both persons was confirmed and the property was distributed to the beneficiaries as aforesaid.

The 1<sup>st</sup> defendant case is that she bought a portion of the land measuring one acre vide a written agreement dated 1.8.1997 and took immediate possession thereof in 1997. The agreement dated 1.8.1997 is between the 1<sup>st</sup> Defendant and Everlyne Cheboo Tuiyo. A perusal

of succession proceedings shows that the grant issued to Everylne Cheboo Tuiyo and Sally Jepkorir Tuiyo was revoked and the agreement entered into by the two former administratrixes was all a nullity and unenforceable.

Nora Birgen was wife to Henry Kiprono Birgen and became the administratrix of the estate of the deceased Henry Kiprono Birgen when he died. Mr. Henry Kiprono Birgen entered into an agreement with the family of Nyanyor Arap Mego after the death of the said Nyanyor and his wife. The agreement is dated 16.3.2003. Again, this court finds that the agreement was an attempt to intermeddle in the estate of the deceased Nyanyor Arap Mego and the same is a nullity and did not confer any right to the alleged purchaser.

The plaintiff's claim is based on the principle of adverse possession. Adverse possession is basically a legal principle applied where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, the period is twelve 12 years.

The process starts by default or inaction of the owner. The essential requirement being that the possession of the adverse possessor is neither by force or stealth or under the license of the owner.

It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.

This doctrine in Kenya is enshrined in **Section 7** of the Limitation of Actions Act, which is in these terms: -

***“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”***

The Limitation of Actions Act makes further provision for adverse possession at **Section 13** that:

***“(1) A right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession), and, where under sections 9, 10, 11 and 12 a right of action to recover land accrues on a certain date and no person is in adverse possession on that date, a right of action does not accrue unless and until some person takes adverse possession of the land.***

***(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer taken to have accrued, and afresh right of action does not accrue unless and until some person again takes adverse possession of the land.***

***(3) For the purposes of this section, receipt of rent under a lease by a person wrongfully claiming, in accordance with section 12(3), the land in reversion is taken to be adverse possession of the land.”***

**Sections 37 and 38** of the Limitation of Actions Act stipulate that if the land is registered under one of the registration acts then the title is not extinguished, but held in trust for the person in adverse possession until he shall have obtained and registered a High Court Order vesting the land in him. **Section 37** provides that: -

***“(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, to land or easement or land comprised in a lease registered under any of those Acts, may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”***

I do find that the defendants entered the suit property with the permission of the widows of the deceased Nyanyor Arap Mego and therefore their entry was not **“non-permissive”**. Moreover, I do find that the proprietor of the land was deceased at the time of entry of the defendants and therefore time did not run against his estate until after confirmation and distribution of the estate. The defendants claim based on adverse possession is therefore not tenable and fails because they were in essence intermeddlers in the estate of the deceased Nyanyor Arap Mego contrary to section 45 of the succession Act Cap 160 laws of Kenya which provides as follows: -

#### **45. No intermeddling with property of deceased person.**

**(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.**

**(2) Any person who contravenes the provisions of this section shall—**

**(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and**

**(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.**

Moreover, the Widows of the deceased had no capacity to sell the property of the deceased without the consent of the beneficiaries and permission by the court as they were trustees of the beneficiaries of the estate of the deceased. The sale of the property of the deceased was contrary to section 37 of the Law of Succession Act which provides for the powers of the spouse during life interest as follows: -

**37. Powers of spouse during life interest**

***A surviving spouse entitled to a life interest under the provisions of Section 35 or 36 of this Act, with the consent of all co-trustees and all children of full age, or with the consent of the court shall, during the period of the life interest, sell any of the property subject to that interest if it is necessary for his own maintenance:***

***Provided that, in the case of immovable property, the exercise of that power shall always be subject to the consent of the court.***

The upshot of the above is that the plaintiff being the registered proprietor of Nandi/Chepkongony/1171 as the absolute proprietor has all rights and privileges appointed to the proprietor.

Section 24 (a) of Land Registration (Act No.3 of 2012) provides that: -

**“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.”**

The registration of the plaintiff as proprietor of the suit land, gives the plaintiff absolute proprietorship for the parcel in dispute. Such absolute proprietorship can only be subject to certain rights and privileges as are known to law. That is why Section 25 of the Act provides as follows;

**S.25 (i) “The right of a Proprietor, whether acquired on first registration or subsequently for valuable consideration or by order of court, shall not be liable to be defeated except as provided by 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, subject;**

**(a) to leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and**

**(b) to such liabilities, rights and interests as affect the same and are declared by Section 28 not to require noting on the register, unless the contrary is expressed in the register.**

**“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 and conditions contained and endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except –**

**a. On the ground of fraud or miss-representation to which the person is proved to be a party to;**

**b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”**

The plaintiff is the registered owner of the suit land and therefore has an indefeasible right over the property. The plaintiff’s rights as proprietor of the suit land is clearly protected in law and the defendants have no reason to trespass thereon and the law allows the Defendants to challenge the plaintiffs’ ownership on grounds of illegality, unprocedural acquisition or corrupt scheme.

I do find that the defendants are trespassers on the suit land and do further find that the suit parcel belongs to the plaintiff and therefore the defendants continued occupation of the same is unlawful and that the defendants should, and are hereby ordered to vacate the suit parcel of land within 30 days failure of which they be evicted from the suit parcel of land upon service of two months’ notice. Suit no. 900 of 2012 and 903 of 2012 consolidated with this suit are dismissed. Costs to the plaintiff.

**Dated and delivered at Eldoret this 25<sup>th</sup> day of May, 2018.**

**A. OMBWAYO**

**JUDGE**