



**REPUBLIC OF KENYA**

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

**E & L CASE NO. 383 OF 2013**

**KIPROTICH BITOK.....PLAINTIFF**

**VERSUS**

**WILLY KIPWAMBOK CHESINGIL.....DEFENDANT**

**JUDGMENT**

1. **Kiprotich Bitok, (hereinafter referred to as the plaintiff)** has come to court against **Willy Kipwambok Chesingil (hereinafter referred to as the defendant)** claiming to be the *bonafide* beneficial and/or registered owner of land parcel No. Eldoret Municipality Block No. 20(Kapyemit)/46 measuring 33 by 100 feet. The defendant has without any right occupied the same and has refused to vacate despite several requests and has barred the plaintiff from accessing the suit land. The plaintiff prays for a declaration that he is a *bonafide* owner of the land and prays for a permanent injunction restraining the defendant from interfering with his quiet enjoyment of the land. The statement of defence was filed on 11<sup>th</sup> April, 2017. The gist of this defence is that the defendant is the owner of the suit land and therefore, orders sought cannot be granted. He denies the contents of the plaint and prays that the suit be dismissed.

2. When the matter came up for hearing, the statement of the plaintiff dated 26.4.2013 and filed on 8<sup>th</sup> July 2013 was adopted as evidence in chief and the plaintiff further testified on oath that he resides at Maili Nne in Eldoret and started buying shares in Kibagenge Self Help Group when he heard that some members were selling their shares. He bought shares from members with the consent of Chesingil Keino but when the said Keino died, they began having problems with Willy Chesingil over ownership of the suit property. Willy Chesingil claimed half of the property and yet he is entitled to 7 x 100 feet.

3. The plaintiff further testified that he stays at Maili Nne, Uganda Road towards Webuye. He is a landlord and custodian of the property. The plot in issue is No. 7 in the old map at Maili Nne measuring 40 x 100 meters and has temporary structures and a Busaa Club. He was a buyer from the shareholders of 6 shares out of 10 from Joseph Kipkemboi Talam on 16.9.2000 whilst the defendant bought 4 plots. He went to lawyer Birir and did the agreement and paid Kshs. 13,000. He left one share which was a room.

4. He produced sale agreement as P.Ex.1 and claims that he does not know that the defendant bought the share. He was using the room on the parcel of land but he was dispossessed by the defendant. The defendant did not buy 4 shares and inherit one from his father as he had 6 shares. Upto 2006, the credible shares were 4 and not 5. He bought the whole 6 shares. He wrote to the defendant. He produced the letter as P.Ex.2 on 31.1.2011. The share could not be subdivided into two as suggested by the chief. He had done renovation on the house. He prays for judgment as prayed in plot. On Cross examination by Kapwambok, the plaintiff states that, he was not there when the defendant allegedly bought the land. He was the owner of the house until the defendant overturned his ownership. There were the plaintiffs who tenant remained in the house but the defendant converted his tenant to pay him. According to the chief of the area, the rent was to be paid to the defendant.

5. The defendant testified that the plaintiff has lied because when he complained, the elders sat down and everybody was told to give his agreement. He has an agreement dated 20.4.2009. He produced the agreement as evidence. He does not have the original – D.Ex.1. The plot is 40 x 100. The elders divided into two, that is 20 x 100 each. Each person has 20 x 100. The plaintiff takes rent from his tenant whilst the defendant does take rent from his tenant in respect of the plot where he has constructed. He has a statement on record.

6. On Cross examination by Mr. Okara, he states that he bought the share from the family of the deceased on 20.4.2009. He was buying the share of Joseph Kipkemboi Talam. When he went to the room, there was a person who had been paying rent to a person he does not know. The tenant is still in occupation. He has not seen the agreement between Bitok and the deceased.

7. Having considered the pleadings and evidence on record and heard the plaintiff and defendant in their submissions, this court finds that on the 16.9.2000, the plaintiff entered into an agreement with one Joseph Kipkemboi Talam for the sale of plot L. R. No. 20/46 situated at Maili Nne Trading Centre within Uasin Gishu District. The plot was owned by 10 people in terms of shares. The plaintiff bought one share of the plot. The one share of the plot was bought for Kshs. 13,000. The agreement does not disclose the size of the plot or the size of the share.

8. On the other hand, the defendant bought an undisclosed share of land from the family of Joseph Kipkemboi Talam on 20.4.2009 in respect of the same parcel. The parcel of land is disclosed as Block 20 parcel Kapyemit farm at a price of Kshs. 27,000. The plaintiff has not produced any document to prove that the plot in dispute exists. There are not receipts from the Municipal Council of Eldoret as it then was to prove that they were receiving rent or money for rates in respect of the plot.

9. The documents produced as exhibits are for Plot No. 20 (Kapyemit) 46. The defendant states in his defence that he bought 20 by 100 feet of the Plot No. 20. The agreement refers to an undisclosed share. This court finds from the evidence on record that both parties purchased a plot each from Joseph Kipkemboi Talam and the family of Joseph Kipkemboi Talam respectively and therefore, are entitled to the same. The plaintiff bought one share whilst the defendant's share is not defined. I do find that it is in the interest of justice that the plaintiff and defendant share the plot in dispute equally in respect of where each party is collecting rent and in possession. Ultimately the court finds that both parties are entitled to an equal portion of plot 20 Kapiyemit each measuring 20 x 100.

**Dated and delivered at Eldoret this 15<sup>th</sup> day of May, 2018.**

**A. OMBWAYO**

**JUDGE**