



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 270 OF 2015

ALFRED AMULYOTO.....PLAINTIFF

VERSUS

PATRICK INGATI MUTESHI.....DEFENDANT

JUDGEMENT

It is the plaintiff's case that, at all material times to this suit the plaintiff was and is still the registered owner of L.P. ISUKHA/KAMBIRI/1272 having purchased it for value from one Rhodah Chendekha Muteshi (now deceased). The plaintiff is unable to utilize his land because the defendant is in occupation and possession and claims to be the owner thereof. The deceased Rhodah Chendekha Muteshi made a reference at Ileho Land Disputes Tribunal the award was ruled in the deceased's favour which award was adopted as the judgment of this honourable court, however the defendant has refused to vacate the said land and is adamant in refusing to vacate the said land and has turned violent against the plaintiff and his agents, servants and representatives. The plaintiff's title is indefeasible as he is the absolute proprietor of L.P. No. Isukha/Kambiri/1272. The plaintiff's claim against the defendant is for eviction and vacant possession. The plaintiff avers that the continued possession and occupation of his land by the defendant has deprived him of proprietary rights over the land. The plaintiff states that the defendant has no legally recognized rights over his land at all. The plaintiff prays for judgment against the defendant for:-

- (a) An order of eviction and vacant possession.
- (b) Costs of this suit.
- (c) Interests on (a) and (b) above.

The defendant avers that he has never been in occupation of land parcel number Isukha/Kambiri/1272 and does not even know its location at ground and further states he lives in land parcel number Isukha/Kambiri/983. The defendant further avers that if the plaintiff has a title deed to the said Isukha/Kambiri/1272 and which is not demarcated at the ground, the orders sought cannot be granted as the same will be incapable of enforcement. The defendant further states that the plaintiff's claim herein against him is untenable in law and that a preliminary objection shall be raised at the hearing that the same be struck out with costs.

This court has carefully considered the evidence and submissions therein. 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.”*

The law is clear that, 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 – On the ground of fraud or misrepresentation to which the person is proved to be a party; or 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.

The plaintiff submitted that he sued the defendant for eviction and vacant possession from the plaintiff's land parcel no. ISUKHA/KAMBIRI/1272. The defendant in his defence denied being in occupation of Land Parcel No. Isukha/Kambiri/1272 and stated that he lives on Land Parcel No. Isukha/Kambiri/983. The defendant further admits that the plaintiff has a title deed to Land parcel No. Isukha/Kambiri/1272 which is not demarcated on the ground. During the hearing of this suit on 22nd April, 2014 this honourable court gave an order directing Kakamega Land Registrar and Surveyor to visit Land Parcel No. Isukha/Kambiri/1272 and 983 and make a report as to where the defendant is residing and demarcates the boundary. The Surveyor and Land Registrar implemented the court order on the 18th October, 2016 and filed their report dated 31st October, 2016 on 17th November, 2016. According to the report the defendant was residing on Land Parcel No. Isukha/Kambiri/1272 which belongs to the plaintiff and the common boundary between Land parcel No. Isukha/Kambiri/1272 and 983 existed. I find that the plaintiff has proved ownership of land parcel No. Isukha/Kambiri/1272, which ownership is not contested, the plaintiff is entitled to the rights of a registered absolute proprietor of a parcel of land, which is exclusive, peaceful, unfettered and unimpeded possession, occupation and use thereof as stipulated in the Registration of Land Act. I find that the plaintiff has proved his case on a balance of probabilities and grant the following orders;

1. The defendant, is to vacate the suit land, land parcel No. Isukha/Kambiri/1272 within the next 3 (three) months from the date of this judgement and in default an eviction order to issue forthwith.
2. Costs of this suit to the plaintiff.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 24TH DAY OF JULY 2018.

N.A. MATHEKA

JUDGE