



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC SUIT NO. 245 OF 2017

SIMON KIBET KETER.....PLAINTIFF

-VERSUS-

WILLIAM KIPROTICH CHEPKWONY.....DEFENDANT

JUDGMENT

By a plaint dated 10th July 2017 the plaintiff sued the defendant seeking for the following orders:

- a) A declaration that the plaintiff is entitled to exclusive and unimpeded right of possession and occupation of all that parcel of land known as Songhor/Cheptonon Block 6/8 (Komolet).
- b) A declaration that the defendant whether by himself or his servants or agents is wrongly in occupation of the suit property and is accordingly a trespasser and should vacate or be evicted.
- c) An injunction restraining the defendant whether by themselves or their servants or agents from continuing in occupation of the suit property.
- d) Costs of the suit.

The defendant was served with summons to enter appearance but neither entered an appearance nor filed a defence. He was also served with a hearing notice for the formal proof but did not attend court therefore the matter proceeded in his absence after an affidavit of service was filed in court.

It was the plaintiff's evidence that he is the registered owner of the suit land having been issued with a title deed in 2014. He further stated that he has been in occupation and has never permitted anyone including the defendant to occupy the suit land. It was further the plaintiff's evidence that the defendant's trespass on his land has led to confrontations of which they referred their dispute to the farm directors.

The plaintiff produced a copy of the title deed registered in his name and stated that the defendant has his own parcel of land which is plot no 3 on the map that the plaintiff produced. He further produced a copy of the Registry Index Map and the members register which indicates the shares for each individual. The plaintiff also stated that there is a road dividing his plot with the defendant's. He therefore prayed that judgment be entered as prayed in his favour.

Counsel for the plaintiff filed written submission and submitted that the issues for determination are:

- a) Whether the plaintiff is the legal owner of the suit land.
- b) Whether the defendant has any legal claim over SONGHOR/CHEPTONON BLOCK 6/8 (KOMOLET)
- c) Whether the plaintiff is entitled to the orders sought
- d) Who should bear the costs.

Counsel submitted that the plaintiff produced a copy of a title deed of the suit land which is prima facie evidence that he has absolute right of ownership. She relied on sections 24, 25 and 26 of the Land Registration Act 2012 to support the plaintiff's case as no fraud or misrepresentation in the acquisition was alleged. Counsel further submitted that the defendant has no known interest in law over the suit land citing section 28 of the Land Registration Act.

Ms. Koech submitted that the plaintiff has proved his case against the defendant and therefore is entitled to the orders sought plus costs of the suit. She urged the court to enter judgment in favour of the plaintiff as prayed in the plaint

Analysis and determination

The issues for determination in this case are as to whether the plaintiff is the bona fide owner of the suit and whether he is entitled to the orders sought in the plaint. The defendant was served with summons to enter appearance but neither filed a memorandum of appearance nor a defence. The defendant was also served with a hearing notice but did not attend court. The matter therefore proceeded ex parte.

The plaintiff produced a copy of a title deed registered in his name. This is prima facie evidence that he is the absolute proprietor of the suit land. There was no evidence that the title was acquired fraudulently or through misrepresentation. Since there was no such evidence section 26 of the Land Registration Act gives the court power to presume that a person named as proprietor of the land is the absolute and indefeasible owner subject to encumbrances, easements, restrictions and conditions endorsed in the certificate. There was no evidence of any encumbrances or restriction on the title produced by the plaintiff.

The plaintiff further produced a Registry Index map and a copy of the members register which indicated the position of his plot and the defendant's. It showed that the defendant has alternative land and therefore should not interfere with the plaintiff's peaceful enjoyment of his parcel of land.

I have considered the pleadings, the supporting documents, the plaintiff's evidence and Counsel's submission and I have come to the conclusion that the plaintiff has proved his case against the defendant as per the required standard. I therefore make the following orders:

- a) A permanent injunction is hereby issued against the defendant, his servants or agents from interfering in anyway with parcel No. SONGHOR/CHEPTONON BLOCK 6/8 (KOMOLET)
- b) The defendant do give vacant possession to the plaintiff within 30 days failure of which an eviction order to issue.
- c) The defendant to pay costs of the suit.

Dated and delivered at Eldoret this 24th day of July, 2018.

M.A ODENY

JUDGE

Judgment read in open court in the presence of Ms Koech for the Plaintiff and in the absence of the defendant.

Mr. Koech: Court Assistant.