



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 335 OF 2014

E N.....PLAINTIFF

VERSUS

C M.....DEFENDANT

JUDGEMENT

By the plaint dated 13th July 2012 the facts are that, at all material times this suit the plaintiff was the registered proprietor of all that parcel of the land known as KAKAMEGA/SHITACHI/[particulars withheld] measuring approximately 0.9 Ha. The defendant had been living on said parcel of land as a guest and or licensee of one MM the mother of the plaintiff herein. The plaintiff avers that the said MM moved back to the matrimonial house in Turbo new scheme leaving behind the defendant on the suit property. The defendant has continued to trespass onto the parcel of the land KAKAMEGA/SHITACHI/[particulars withheld] and illegally continues to occupy the same thereby denying the plaintiff his peaceful and quiet enjoyment of the same. The defendant has despite several demands and reminders from the plaintiff failed and/or refused to vacate the parcel of land herein thereby causing the plaintiff to suffer loss and damage which she holds the defendant liable. There has been demand and notice of intention to sue issued to the defendant by the plaintiff but the defendant persists in default. The plaintiff prays for judgment against the defendant for:-

- (a) An order of eviction to be issued against the defendant, his servants, agents, or persons acting from land parcel KAKAMEGA/SHITACHI/[particulars withheld].
- (b) A permanent injunction restraining the defendant whether by himself, agents or servants from trespassing onto, dealing with cultivating and disposing off LR. NO. KAKAMEGA/SHITACHI/[particulars withheld] until the hearing and determination of the suit herein.
- (c) Mesne profits from 2007 to date.
- (d) Interest on c above.
- (e) Costs of this suit.

PWI testified that she is the registered owner of land parcel known as KAKAMEGA/SHITACHI/[particulars withheld] measuring approximately 0.9 hectares or thereabouts (PEX1 is a copy of the title). That she bought the said land KAKAMEGA/SHITACHI/[particulars withheld] in 1987 jointly with her sister CMV from AM for a consideration of Ksh. 17,000/= paid in full. That she registered the land in her name only with the consent and knowledge of her said sister CMV. That in 1960s, her mother MM got married to her step father the late PV whom during his lifetime had adopted herself and her sister CMV as his children. That her said parents had established their matrimonial home in Turbo. That after separation her said mother was staying at Khayega Market. That jointly with her sister C they bought for her land at Museno, Shianyinya area which is the suit herein but registered it in her name. That her said mother got into a relationship with the defendant herein Christopher Mwanzi who was a guest to her mother in her house on the suit land which they settled her thereon. That intention of buying the suit land was to make their mother comfortable and settled in the house they constructed on the suit land. That in 2008 her step father PV died and her mother returned to Turbo but the defendant Christopher Mwanzi is still illegal occupation of the land despite demands that he vacates. That the defendant is a mere trespasser without any registrable interest regarding the suit land and has no justification remaining on the suit land since he was brought on the suit land with the permission of her mother without her consent.

This court has carefully considered the evidence and submissions therein. The defendant was served but failed to attend court or file and defence. 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 she is the registered proprietor of all that parcel of the land known as KAKAMEGA/SHITACHI/[particulars withheld] measuring approximately 0.9 Ha. The defendant had been living on said parcel of land as a guest and or licensee of one MM the mother of the plaintiff herein. The plaintiff avers that the said MM moved back to the matrimonial house in Turbo new scheme leaving behind the defendant on the suit property. The defendant has continued to trespass onto the parcel of the land KAKAMEGA/SHITACHI/[particulars withheld] and illegally continues to occupy the same thereby denying the plaintiff her peaceful and quiet enjoyment of the same. I find that the plaintiff has proved ownership of land parcel No. KAKAMEGA/SHITACHI/[particulars withheld], 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. Mesne profits were not proved and the same will not be awarded. I find that the plaintiff has proved her case on a balance of probabilities and grant the following orders;

1. The defendant, is to vacate the suit land, land parcel No. KAKAMEGA/SHITACHI/[particulars withheld] within the next 3 (three) months from the date of this judgement and in default an eviction order to issue forthwith.
2. A permanent injunction restraining the defendant whether by himself, agents or servants from trespassing onto, dealing with cultivating and disposing off LR. NO. KAKAMEGA/SHITACHI/[particulars withheld].
3. Costs of this suit to the plaintiff.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 20TH DAY OF SEPTEMBER 2018.

N.A. MATHEKA

JUDGE