



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L CASE NO. 23 OF 2018

PATRICK KIPKETER BIRECH.....PLAINTIFF

VERSUS

EZINA KADENYI MUGAMANGI.....1ST DEFENDANT

BENARD MUBAWANGA.....2ND DEFENDANT

PATRICK SAVA.....3RD DEFENDANT

AGGREY NDAZALIRA.....4TH DEFENDANT

ALEX CHUMBA.....5TH DEFENDANT

DIANA LUMU.....6TH DEFENDANT

HARON IGATWA LUMU.....7TH DEFENDANT

JUDGMENT

By a plaint dated 29th January 2018 the plaintiff herein sued the defendants seeking for the following orders:

1. The eviction of the defendants from land reference Nandi/Chebilat/171 and the demolition of structures thereon.
2. A permanent injunction to restrain the defendants from returning to land or occupying land reference No. Nandi/Chebilat/171.
3. Costs of the suit.

The defendants were served with summons to enter appearance together with the plaint but neither filed a memorandum of appearance nor a defence within the stipulated period. They were later served with a hearing notice but never came to court to defend themselves. The matter therefore proceeded by way of formal proof.

The plaintiff gave evidence and stated that he is the registered owner of the suit parcel of land measuring 6.2 hectares of which he produced a copy of the title deed as an exhibit. It was his evidence that the defendants trespassed on his parcel of land in 2016 and occupied portions of the suit land without any justification.

The plaintiff also stated that the defendants have put up temporary structures on the suit land which does not belong to them. The plaintiff further produced a copy of official search and a demand letter that his lawyer wrote to the defendants asking them to vacate the suit land but they were adamant. It was the plaintiff's further evidence that he is entitled to exclusive enjoyment of his suit parcel of land and that the conduct of the defendants is detrimental to such right

The plaintiff therefore prayed that the defendants be evicted from the suit land and be ordered to demolish the illegal temporary structures put up by the defendants.

Counsel for the plaintiff filed written submissions and reiterated the plaintiff's evidence and urged the court to enter judgment for the plaintiff as prayed in the plaint.

Analysis and determination

The plaintiff filed this suit against the defendants seeking for an order of eviction and injunction against the defendants from trespassing on occupying the suit land. The defendants were served with summons to enter appearance and a copy of the plaint but they neither filed a memorandum of appearance nor a defence. They were also served with a hearing notice for the formal proof but they did not show up in court.

The issues for determination are as to whether the plaintiff is the registered owner of the suit land. Whether the defendants are trespassers on the suit land and whether the plaintiff has proved his case on a balance of probabilities.

The plaintiff's evidence was uncontroverted. He gave evidence and proved that he is the sole registered owner of the suit land by producing a copy of a title deed in his favour. The plaintiff also produced a copy of an official search indicating that he is the registered owner of the suit land. This is prima facie evidence that he is the owner of the suit land. There was no evidence to controvert this or that the title was procured fraudulently or by misrepresentation. There being no such evidence the court is therefore enjoined to presume that the plaintiff is the registered owner of the suit land.

It was further the plaintiff's evidence that the defendants have trespassed onto his parcel of land without any justification. The defendants were given an opportunity to controvert this position but they squandered this chance. The court is therefore left with one side of the story which is the plaintiff's. Since there was no evidence to rebut the plaintiff's case, the court is left with no option but to find that the defendants are trespassers on the plaintiff's suit land.

I have considered the pleadings, the evidence and the exhibits produced by the plaintiff and come to the conclusion that the plaintiff has proved his case against the defendants on a balance of probabilities. I therefore enter judgment in favour of the plaintiff in the following terms:

1. The defendants to give vacant possession to the plaintiff on Land Reference Nandi/Chebilat/171 and demolish the structures thereon within 30 days failure of which an eviction order to issue.
2. A permanent injunction is hereby issued restraining the defendants from returning to the land or occupying land reference No. Nandi/Chebilat/171.
3. The defendants to pay costs of the suit.

Dated and delivered at Eldoret this 23rd day of October, 2018

M.A ODENY

JUDGE

Judgment read in open court in the presence of Mr. Mogambi holding brief for Mr. Momanyi for Plaintiff and in the absence of the Defendant.

Mr. Koech: Court Assistant.