



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 75 OF 2012

NATHAN ANDUKU LIKALAMU.....PLAINTIFF

VERSUS

DICKSON JUMA KIMUNGU.....DEFENDANT

JUDGEMENT

The plaintiff's case is that, on or about 1993 his son called Anthony Shifwoko Anduku entered into a land sale agreement for sale of L.P. No. Kakamega/Sango/970 measuring 1.07 Ha. with one William B. Kimungu and bought to him the land parcel at a consideration agreed purchase price of Ksh. 120,000/= which was paid in three instalments. That on or about the year 2000 the land was transferred and registered into his name and he was issued with a title deed for the land parcel. The plaintiff alleges that he is therefore the proprietor/owner/title holder of the L.P. No. Kakamega/Sango/970. The defendant herein is the son to the former title holder William Kimungui and was even a witness during the land sale agreements. The defendant was given an alternative land to settle by his father. The defendant without his consent encroached and alienated a portion of my L.P. No. Kak/Sango/970 and occupied a portion of it and constructed a house. The defendant is adamant and is forcefully occupying a portion on the L.P. No. Kakamega/Sango/97 and has refused to vacate this land parcel. Despite several demands to the defendant to vacate the portion he is occupying on his L.P. No. KAKAMEGA/SANGO/970 he refused to co-operate to the same and has continued to occupy the same. The plaintiff's prayer to court against the defendant is an order of eviction to be forcefully evicted from a portion he occupies on the L.P. No. KAKAMEGA/SANGO/970. PW2 and PW3 corroborated the plaintiff's evidence. The plaintiff prays for judgment to be entered against the defendant for:-

- (a) An order of eviction against the defendant to be forcefully evicted from the L.P. No. KAKAMEGA/SANGO/970.
- (b) Costs
- (c) Any other relief/remedy this hon. Court may deem fit and just to grant.

The defendant denies in his statement of defence that there was any agreement for the sale of Land Parcel No. Kakamega/Sango/970 measuring 1.07 hectares. The defendant further denies that one William B. Kimungui was ever registered as the owner of land Parcel No. Kakamega/Sango/970. The defendant contends that the registration of the plaintiff as owner of Land parcel No Kakamega/Sango/970 was caused by fraud. However, during his testimony in court, the defendant admits that his father sold the land to PW2 and he was a witness. He admits that they took the purchase price and he did not object to the sale.

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 testified that he is the registered owner of land parcel no. Kakamega/Sango/970. His son called Anthony Shifwoko Anduku (PW2) entered into a land sale agreement for sale of L.P. No. Kakamega/Sango/970 measuring 1.07 Ha. with one William B. Kimungui and bought to him the land parcel at a consideration agreed purchase price of Ksh. 120,000/= which was paid in three instalments. The defendant admits that his father William B. Kimungui sold the land to PW2 and he was a witness. He admits that they took the purchase price and he did not object to the sale. I find that the defendant has continued to trespass onto the parcel of the land No. Kakamega/Sango/970 and illegally continues to occupy the same thereby denying the plaintiff his peaceful and quiet enjoyment of the same. I find that the plaintiff has proved ownership of land parcel No. Kakamega/Sango/970, 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. That the defendant to vacate the suit parcel No. Kakamega/Sango/970, within the next 3 (three) months from the dated of this judgement and in default eviction order to issue forthwith.
2. Costs of the suit be borne by the defendant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 16TH DAY OF OCTOBER 2018.

N.A. MATHEKA

JUDGE