



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 248 OF 2014

LAWRENCE SHIUNDU ANYOLO.....PLAINTIFF

VERSUS

JULIETA MUTESHI.....DEFENDANT

JUDGEMENT

By a plaint dated 18th September 2012 the plaintiff avers that at all material times relevant to this suit, the plaintiff is the registered owner, absolute, of whole that parcel of land better known as L.R. NO. ISUKHA/SHITOCHI/1198 measuring approximately 0.32 ha and/or thereabouts. On or about the 5th day of September, 2012, the defendant willfully, unlawfully, without justifiable cause of action, permission, consent and/or otherwise any colour of right buried and or caused to be buried the body of one Patrick Isanya on the plaintiff's parcel of land better known as L.R. NO. ISUKHA/SHITOCHI/1198. The plaintiff claim against the defendant is for an order of exhumation of the body of one Patrick Isanya from the plaintiff's parcel of land better known as L.R. NO. ISUKHA/SHITOCHI/1198. The plaintiff further claims against the defendant is for an order of eviction and demolish of any structures erected by the defendant on the plaintiff's parcel of land better known as L.R. NO. ISUKHA/SHITOCHI/1198. The plaintiff prays for judgment against the defendant as follows:-

- (a) An order of exhumation of the body of one Patrick Isanya from the plaintiff's parcel of land better known as L.R. NO. ISUKHA/SHITOCHI/1198.
- (b) An order of eviction and demolish of any structures erected by the defendant on the plaintiff's parcel of land better known as L.R. NO. ISUKHA/SHITOCHI/1198.
- (c) Costs of this suit.
- (d) Any other relief this honourable court may deem fit and expedient to grant.

During the hearing the plaintiff withdrew prayer of the plaint. He produced the title deed (PEx1), copy of the register and search (PEx. 2 &3) as proof of ownership.

The defendant was served but failed to attend court to give any evidence. The statement of defence on record is a mere denial.

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.”

It is not in dispute that was the registered owner of L.R. NO. ISUKHA/SHITACHI/1198 measuring approximately 0.32 ha and/or thereabouts. He produced the title, search and green card of the said suit land. The defendant has offered no defence to be considered. I see no evidence that the title was obtained by fraud or through corrupt means. I find that the plaintiff has proved his case on a balance of probabilities and grant the following orders;

1. The defendant is given 3 (three) months from the date of this judgement to vacate and demolish of any structures erected by the defendant on the plaintiff's parcel of land better known as L.R. NO. ISUKHA/SHITACHI/1198 and in default an order of eviction 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 22ND DAY OF NOVEMBER 2018.

N.A. MATHEKA

JUDGE