



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC CASE NO. 129 OF 2017**

**VINCENT MUKANGAYI ACHANDO.....PLAINTIFF**

**VERSUS**

**CHRISTOPHER IMBIAKHA.....DEFENDANT**

**JUDGEMENT**

By a plaint dated 26<sup>th</sup> April 2017 the plaintiff avers that, at all material times he is the registered proprietor of parcel of land known as Butsotso/Shikoti/1347. The plaintiff avers that the defendant in 2006 or thereabouts illegally and unlawfully without any colour of right or justification in law trespassed onto the portion of suit land herein measuring 1.0 acre or thereabouts and forcibly and proceeded to construct a semi-permanent house thereon and utilized the said portion of suit land which action has deprived the plaintiff the use and peaceful enjoyment of the said portion of land thereby causing him loss and damage. The plaintiff further avers that the defendant does not have any registrable and or beneficial interest over the suit land herein. The plaintiff further avers that he acquired acquisition and obtained title of the suit land legally and procedurally from his father Michael Achando Omolo upon sub division and subsequent transfer of the title number Butsotso/Shikoti/13847 created from the original Butsotso/Shikoti/1939. The plaintiff further prays for an order of permanent injunction be issued to restrain the defendant whether by himself, his servants, agents, heir and personal representatives from interfering with, tilling, constructing, disposing off or in other manner dealing with the parcel of land known as Butsotso/Shikoti/13847. The plaintiff seeks for an order of eviction be issued against the defendant, his family members, servants, agents, heirs, personal representatives and or any person acting on his behalf from the parcel of land known as Butsotso/Shikoti/13847. The plaintiff further prays that the OCS, Kakamega Police Station to enforce the orders of eviction against the defendant herein. The plaintiff prays for orders as follows;

- (a) A permanent injunction be issued to restrain the defendant whether by himself, his servants, agents, heirs, personal representatives and or any other person acting on his behalf from interfering with, tilling, constructing, disposing off or in other manner dealing with the parcel of land known as Butsotso/Shikoti/13847.
- (b) An order of eviction be issued against the defendant, his family members, servants, agents, heirs, personal representatives and or any person acting on his behalf from the parcel of land known as Butsotso/Shikoti/13847.
- (c) The OCS, Kakamega Police Station to enforce the eviction order against the defendant.
- (d) Costs of this suit.

PW2 testified that the plaintiff is his son and the defendant his nephew. He subdivided his land and gave the plaintiff the suit land. The defendant has moved there and refuses to vacate.

This court has considered the evidence and the submissions therein. The defendant was served but failed to attend court or file any papers in 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.*”

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 has produced evidence to prove that he is the registered proprietor of the suit land PEx1. PW2 corroborated the plaintiff’s evidence and confirms he transferred the land to the plaintiff. The defendant has offered no evidence to be considered. I see no evidence that the title was obtain through fraud or misrepresentation. I find that the plaintiff has proved his case on a balance of probabilities and I grant the following orders;

1. A permanent injunction be issued to restrain the defendant whether by himself, his servants, agents, heirs, personal representatives and or any other person acting on his behalf from interfering with, tilling, constructing, disposing off or in other manner dealing with the parcel of land known as Butsotso/Shikoti/13847.
2. The defendant, his family members, servants, agents, heirs, personal representatives and or any person acting on his behalf are to vacate from the parcel of land known as Butsotso/Shikoti/13847 within the next six (6) months from the date of this judgement and in default vacation notice to issue forthwith.
3. The OCS, Kakamega Police Station to enforce the eviction order against the defendant.
4. Costs of this suit to the plaintiff.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 21<sup>ST</sup> DAY NOVEMBER 2018.**

**N.A. MATHEKA**

**JUDGE**