



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC SUIT NO. 389 OF 2017

KANGOGO CHEBII.....PLAINTIFF

VERSUS

JACKSON KIBET CHESANG.....DEFENDANTS

JUDGMENT

By a plaint dated 6th December 2017 the plaintiff herein sued the defendant seeking for the following orders:

- a) An order of eviction and further orders compelling the defendant to hand over vacant possession of $\frac{1}{2}$ an acre or approximate acreage of the land described as BARINGO/KAPKIAMO/1777 measuring approximately 1.11HA
- b) A permanent injunction restraining the defendant, his servants, workmen and agents from entering, trespassing, cultivating on and or erecting or causing to be erected thereon any structures and or ploughing or in any way interfering with the plaintiff's enjoyment of that parcel of land known as BARINGO/KAPKIAMO/1777 measuring approximately 1.11HA
- c) General damages for trespass.
- d) Costs of the suit and interest.

The defendant was served with summons to enter appearance but neither entered appearance nor filed a defence within the stipulated period therefore the matter proceeded by way of formal proof.

The plaintiff adopted his statement as evidence before the court whereby he stated that the defendant trespassed on to his parcel of land and built a temporary structure and planted crops without his permission. He stated that he reported the matter to the chief and the Police and the defendant was arrested and later released. The chief advised them to go to court as he does not have powers to handle a matter where the land is registered.

The plaintiff produced a copy of a title deed, and official search and a demand letter to the defendant. He urged the court to grant orders as prayed in the plaint.

Analysis and determination

The plaintiff gave evidence and produced a copy of the title to the suit land registered in his name. The same has not been controverted. The production of a title in the plaintiff's name is prima facie evidence that he is the rightful owner of the suit land as its acquisition has not been questioned. With no any other evidence to the contrary the court must assume that it is authentic.

The plaintiff's evidence was unchallenged by any other evidence to the contrary. I find that the plaintiff has proved his case on a balance of probabilities against the defendant.

On the issue of general damages, trespass is a tort which is actionable per se. Damage to property was proved by the plaintiff from the agricultural activities and the structures erected thereon by the defendant. The unlawful entry and use of the land is enough proof of injury to the plaintiff by the defendant. The plaintiff also stated that the defendant has planted some crops and built some dwelling house.

The plaintiff has been prevented from user of the $\frac{1}{2}$ acres portion of land. I therefore award the plaintiff Kshs 100,000/ as general damages for trespass and further make the following orders:

- a) The defendant to give the plaintiff vacant possession on the of $\frac{1}{2}$ an acre of parcel No. BARINGO/KAPKIAMO/1777

measuring approximately 1.11HA within 30 days failure of which an eviction order to issue.

b) A permanent injunction is hereby issued restraining the defendant, his servants, workmen and agents from entering, trespassing, cultivating on and or erecting or causing to be erected thereon any structures and or ploughing or in any way interfering with the plaintiff's enjoyment of that parcel of land known as BARINGO/KAPKIAMO/1777 measuring approximately 1.11HA

c) General damages for trespass for Kshs 100,000/

d) Costs of the suit and interest.

DATED and DELIVERED at ELDORET this 17TH DAY of DECEMBER, 2018.

M.A ODENY

JUDGE

Judgment read in open court in the presence of Miss Wamalwa holding brief for Mr. Mwetich for Plaintiff and in the absence of the defendant.

Mr. Koech: Court Assistant.