



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 153 OF 2014**

**RICHARD KIPMALEL CHESIMET.....PLAINTIFF**

**VERSUS**

**NANDI COUNTY GOVERNMENT.....DEFENDANT**

**JUDGMENT**

**Richard Kipmalel Chesimet (hereinafter referred to as plaintiff)** has through plaint amended on 22<sup>nd</sup> May 2017 sued **Nandi County government hereinafter referred to as the defendant** claiming that at all material times, the Plaintiff is the registered owner and proprietor of land parcel known as L. R. NO. 7830/120 situated at Nandi Hills Town measuring approximately 0.0824 Ha. or thereabouts having purchased it in the year 1990 from one Abednego Dera.

That on or about 08.05.2014, the defendant without any colour of right unlawfully gave notice to demolish the plaintiff's commercial houses and/or structures standing thereon to the detriment of the plaintiff. The Plaintiff avers that the Defendant's actions are punitive, unconstitutional and amount to trespass upon the suit land.

The Plaintiff's claim against the defendant is for an order of declaration as the lawful owner of the suit land, and an injunction and eviction order against the defendant on the aforesaid parcel of land.

The Plaintiff further avers that the suit property is connected with electricity, water and sewer services and as a result of the Defendant's trespass, the Plaintiff and/or his tenants could not utilize the same.

The particulars of the defendant's trespass are that on 08.05.2014, the defendant unlawfully encroached onto the Plaintiff's suit property to wit L. R. NO. 7830/120 claiming that the suit property lies on a road reserve and going further to demand that the Plaintiffs tenants to vacate the said premises.

The Plaintiff avers and contends that the Plaintiff had tenants utilizing the building thereof for commercial purposes and it is patently clear that the defendant intends to deprive the plaintiff of his right of entitlement contrary to the established law.

The Plaintiff avers that as a result of the defendant's acts of trespass, the Plaintiff has suffered loss and damage.

The particulars of loss and damage are that the suit property had been leased to Tenants by the plaintiff for commercial utilization. The unencumbered leasehold interest in Title L. R. NO. 7830/120 contains a round rental value of Kshs. 1,525/= per annum which is borne by the Plaintiff. The Loss of earnings from two shops of lettable area of 1685.60 sq.ft at Kshs.67,424/= per month from 08.05.2014 till judgement herein. Costs of valuation incurred on 02.11.2016 of Kshs.20 000/=. Costs of survey paid on 10.07.2014 of Kshs. 32,000. Costs of implementing Court Orders and Court Reports of Kshs. 12,000.

The Plaintiff states that despite demand and notice of intention to sue having been issued, the Defendant has failed, neglected and/or declined to move out of suit land necessitating filing of this suit.

The plaintiff avers that there is no suit pending and there have been no other previous proceedings between the Plaintiff and the Defendant over the same subject matter. This Honourable Court is vested with jurisdiction to entertain and determine this suit.

The plaintiff prays for a declaration that the plaintiff is the registered proprietor and owner of land parcel known as L. R. NO. 7830/120 and that the defendant is a trespasser thereon and an eviction Order to issue forthwith removing the Defendant by itself, its agents and/or servants from the Plaintiffs suit parcel of land L.R. NO. 7830/120 measuring 0.0824 Ha or thereabouts.

The plaintiff further prays for a permanent injunction restraining the defendant, its agents, employees and/or servants from trespassing, occupying and/or in any way interfering with the plaintiff quiet possession of land parcel no. LR. NO. 7830/120

Lastly, an order compelling the Defendant to pay the loss of earnings till judgement plus costs and interests of this suit.

The defendant filed amended defence denying that on or about 8<sup>th</sup> May, 2014, the defendant issued a Notice to the Plaintiff to demolish commercial houses on the Plaintiff's plot and put the Plaintiff to strict proof. The defendant further states that no Notice of demolition was ever issued and that the defendant has not interfered with the plaintiff's business or commercial building or rental houses. The defendant has never trespassed into the plaintiff's land. The defendant has not encroached into the plaintiff's plot.

The defendant denies vehemently all the allegations of trespass or particulars of loss or special damages as pleaded at paragraph 9 a, b, c, d, e and f and puts the Plaintiff to strict proof.

The defendant states that there is no proof that the defendant suffered loss of rent or loss of earnings at Kshs.67,424/= as from 8<sup>th</sup> May, 2014 to date and puts the Plaintiff to strict proof.

The claim for costs of survey and survey report is denied as the same was done by a Government Survey and paid by the National Government. The Defendant avers that the claim for loss of earnings or income has no legal standing and it should be dismissed.

When the matter came up for hearing, the plaintiff testified that he purchased the land parcel number L. R. 7830/120 from one Mr. Abednego Dera in the year 1990 which had a house, standing on it. He verified the beacons. He claims not to have interfered with the boundaries. He went to the County Land Surveyor who surveyed the land and found that he had not erected on the road reserve. He was ordered to demolish the building hence he closed the building on 15.4.2015. He prays for judgment as the plot is his. He produced the valuation report. The defendant was aware of the hearing date but never turned up hence the plaintiff's evidence was not controverted.

I do find that the plaintiff is the registered owner of L. R. No. 7830/120, I. R. No. 21461 at Nandi Hills Township. The property became vacant after the County government of Nandi marked the building for demolition.

The plaintiff has proved his case on a balance of probabilities hence the court grants a declaration that the plaintiff is the registered proprietor

and owner of land parcel known as L. R. NO. 7830/120 and that the defendant is a trespasser thereon and an eviction Order to issue forthwith removing the Defendant by itself, its agents and/or servants from the Plaintiffs suit parcel of land L.R. NO. 7830/120 measuring 0.0824 Ha or thereabouts.

The court further grants a permanent injunction restraining the defendant, its agents, employees and/or servants from trespassing, occupying and/or in any way interfering with the plaintiff quiet possession of land parcel no. LR. NO. 7830/120.

L. K. Toroitich, registered Practicing Valuer gave the property the rental value of Kshs. 67,424. The rental value is not challenged by the defendant. The plaintiff's tenants vacated the premises on 15.4.2014 and therefore, the premises have been vacant for 55 months. The loss of income will be calculated as follows:

***Monthly rent x months the building has been vacant.***

***Thus; 67,424 x 55 months = 3,708,320.***

Lastly, I do award the plaintiff loss of earnings and do grant an order compelling the Defendant to pay the loss of earnings of Kshs.3,708,320, plus costs and interests of this suit. Orders accordingly.

**Dated and delivered at Eldoret this 17<sup>th</sup> day of December, 2018.**

**A. OMBWAYO**

**JUDGE**