



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 88 OF 2014

BENJAMIN KANGOGO RAMOND.....PLAINTIFF

VERSUS

SAMUEL KIPROTICH.....DEFENDANT

R U L I N G

1. The defendant/applicant filed an application dated **21/6/2016** seeking that the suit be struck out and/or dismissed with costs and that costs be provided for.
2. The grounds upon which the application is based are that the plaintiff is not the registered owner of the land in question and that he has no capacity to prosecute this suit as the Grant and Certificate of Confirmation issued to the plaintiff were revoked and the Title Deed issued in the name of the plaintiff was cancelled. The application is unopposed.
3. It is necessary to trace the history of this matter in order to determine the current application. The record shows plaintiff was filed on 21/5/2014. The plaintiff claimed to own **LR. No. Kitale Municipality Block 15/Koitogos/1363**. He accused the defendant of wrongfully entering and taking possession of the land in **2013** and remaining in possession thereof. The plaintiff claimed that the defendant had deprived him of the use and quiet enjoyment of the property and that the defendant's misuse of the property may lead to environmental degradation.
4. The plaintiff therefore sought orders of declaration that the parcel of land belongs solely to him, an order that the defendant is in wrongful occupation of the land and a trespasser, that the defendant should give vacant possession or be evicted, and a permanent injunction to restrain the defendant from trespassing on the land.
5. The defendant filed a defence on **11/11/2014** claiming that the suit was fatally defective as the plaintiff had no legal capacity to sue him, that the plaintiff is not the owner of the land, that the suit land belonged to the defendant's deceased father one **Raymond Chebet Chepkenga** and that the plaintiff had forged documents to have himself registered as the owner.
6. The defendant stated in his defence that there was a pending succession matter between the plaintiff and the defendant's mother, to wit, **Kitale High Court P & A Cause No. 210 of 2012** which the plaintiff had concealed from this court. The defendant further averred that he and not the plaintiff had been in possession of the land, and he had been in possession of the land since **1990**, he also denied any waste or damage. He sought an order that the plaintiff's case be dismissed with costs.
7. A copy of **Gazette Notice No. 15582** is listed as part of the defendant's intended documentary evidence. It shows that a process for reissuance of the title deed in respect of Plot No. **Kitale**

Municipality Block 15/Koitogos/1363, which is said to be lost, has commenced. A copy of the said title deed and a certificate of official search listed as part of the defendant's documentary evidence also show that the land is registered in the name of one **Raymond Chebet Chepkonga**.

8. I have also read the copy of proceedings in the **High Court of Kenya at Kitale in P & A Cause No. 210 of 2012** in which the parties, including the plaintiff in this matter, consented to the revocation of the Grant. The proceedings also show that the Title Deed issued in the name of **Benjamin Kangogo Ramond** for land parcel **Kitale Municipality Block 15/Koitogos/1363** was cancelled on **10/11/2015**, thus reverting the land registration status to the original state it was in before the Grant.

9. It is the Grant dated **10th October, 2013** that conferred title to the plaintiff. Without it, there would be no Title in the name of the plaintiff. The court in **Kitale P & A Cause 210/2012** went on to clear all doubts by ordering expressly that the Title in the plaintiff's name upon Confirmation of the Grant be cancelled. This is all evident in the proceedings in **Kitale P & A Cause No. 210 of 2012** which are marked as Exhibit "SK4" in the affidavit of **Samuel Kiprotich** in support of the application at hand.

10. For these reasons it is the correct position that the plaintiff now has no capacity to maintain the proceedings herein. I find that his *locus standi* changed immediately the **Grant of Letters of Administration in Kitale P & A. 210 of 2012** and the Title in his name were revoked by a Court of Law.

11. I therefore allow the application dated **21/6/2016** filed by the defendant, and hereby dismiss the plaintiff's suit with costs to the defendant.

Dated, signed and delivered at Kitale on this 27th day of February, 2017.

MWANGI NJOROGI

JUDGE

In presence of:

Mr. Chebii for the Applicant present

Court Assistant – Isabella.

MWANGI NJOROGI

JUDGE

27/02/2017