



**REPUBLIC OF KENYA**

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

**E&L CASE NO. 266 OF 2014**

**JOYCE NIKAORE KHAMALI..... PLAINTIFF**

**VERSUS**

**KRISHOM CHEPMWOK ..... DEFENDANT**

**JUDGMENT**

Joyce Nikaore Khamali (*hereinafter referred to as the Plaintiff*) has sued Krishom Chepmwok (*herein after referred to as the defendant*) claiming that the Defendant wrongfully and unlawfully trespassed into the Plaintiff parcel of land comprised in Title No. NANDI/KEMELOI/789 wherein he did cut the Plaintiffs blue gum trees aged 1 year valued at Kshs.100/per tree. That the defendant therefore has illegally damaged the Plaintiff's 292 Eucalyptus (blue gum) (one year old) trees each cost Kshs 100 amounting to Kshs 29,200/= by cutting and uprooting them. That the Plaintiff further avers that blue gum trees when harvested at six (6) years would cost Kshs 6,000/= each and as a consequence general damage are sought against the defendant for his mischievous and malicious Act of destroying the Plaintiff's investment. The Plaintiff prays for an order of permanent injunction barring the defendant, his agents and or servants from entering, damaging any property belonging to the Plaintiff. The Plaintiff prays further for orders that the defendant do pay for the trees he destroyed and the general damages for expected earnings at the appropriate time. That by reason of actions of the defendant, the plaintiff has suffered loss and damages.

The defendant filed defence stating that the land NANDI/KAPTEL/789 does not belong to the Plaintiff and therefore her claim ought to be dismissed. The defendant denies being a trespasser and categorically states that he is lawfully on his purchased portion of 0.2 acres of NANDI/KEMELOI/789 to the exclusion of the Plaintiff who has lodged this suit with a view of ejecting him from therein maliciously. He denies the claim that he has damaged the Plaintiff's blue gum trees by cutting and or uprooting as his said 0.2 acres are planted with mature tea regularly plucked by him for his own benefit and which plucking the defendant has purported to carry out allegedly on the strength of this plaint filed in court.

The Defendant avers that the order of injunction is not tenable as the Defendant is on the land utilizing the same having planted tea thereon. The Defendant further states that the order of paying for trees is bad and improper in the absence of proof of ownership of the land, occupation and actual damage or proof of valuation and the same should now be dismissed. No loss actual or real has been proved and the prayer for a nonexistent loss ought to be rejected against and dismissed with costs.

When the matter came for hearing the *Joyce Nikaore Khamali*, the Plaintiff testified that she was interested in buying land from one Kipchumba Arap Buluny. That the said Kipchumba walked him through the land which was vacant and uncleared. That they agreed on the price which was Kshs. 26,500/= and therefore a sale agreement dated 11.12.1986 was made to that effect. That she paid the whole amount and hence she owes Kipchumba no money. That after clearing the whole amount,

Kipchumba gave him land parcel No. NANDI/KEMELOI/789. That on 5.6.2014 the defendant trespassed into his land and cut Eucalyptus trees (blue gum) valued at Kshs. 29,200/= which she now claims. That the defendant too has been laying false claim to his title which claim is baseless and an affront to creating disturbance all along. That at her old age she needs peace and that the defendant be enjoined from trespassing into her land.

The Plaintiff called **Joseph Kipngetich Mtai** who testified that he works with Ministry of Agriculture in Aldai Division. He knows the plaintiff Joyce Nikaore Amali. On 13.06.2015 Joyce Nikaore reported that her seedlings had been destroyed and therefore he was requested to do validity. He found that 292 seedlings had been destroyed. He did valuation and found that one tree was Kshs 100. The amount owed is Kshs 29,200. He produced the report at PEX1.

**Rodah Nanga** testified that Joyce Nikaore Khamali the Plaintiff herein is her mother and that she is well aware of the facts of this case. That on 11.12.1986 her mother bought land from Kipchumba Arap Buluny land parcel No. NANDI/KEMELOI/789 where sale agreement was made that very day for 1.02 Ha. That when her mother bought the land, it was uncleared and nobody was in occupation. That the defendant herein claims to have bought the suit land in 1984 which is a lie as he has no title deed. That nobody else has claimed the suit land except her mother as assured by the seller one Kipchumba. That in 2013, her mother planted eucalyptus (blue gum) trees which were destroyed by the defendant after one year that was on 5.6.2014. That on 13.6.2014 she accompanied her mother to Kobujoi Police station where they made a report on the incident and were given OB 6/13/6/2014. That the O.C.S at Kobujoi police station directed them to the Divisional Agricultural officer who made tree damage assessment and valuation. That a report from Divisional Agricultural Office dated 13.06.2014 show the value of damage is Kshs. 29,200.

**Thomas Arap Ragut** testified that he is a neighbor to the Plaintiff herein. That Mr. Kipchumba Arap Buluny sold land title NO. NANDI/KEMELOI/789 comprising 1.02 Ha to the Plaintiff. That he was a witness therein in the transaction and thereafter the Plaintiff took possession of the land from 11<sup>th</sup> December 1986 and settled therein to date. According to Thomas Arap Ragut, the defendant is a troublesome trespasser.

DWI, **Krishom Chepmwok, the defendant herein testified that he** is a resident of Kemeloi and that in 1984, he bought a portion of land from Kipchumba Buluny, namely Nandi/Kemeloi/789 that from then, he constructed a house to stay in while using but since he had heavy school fees for children, he sold it to Mr. Timothy Kiliveye in 1995. Mr. Timothy has been using it until now. In the plot, there were few blue gum trees of which he surrendered to Mr. Timothy Kiliveye. Surprisingly, when he asked Mr. Buluny to give a title deed to Timothy, it was discovered that Mrs. Joyce Khamati who lastly bought the last portion of the land No. 789 had already got the title deed. That he had to take the matter to office of chief, Mugen location on 6.8.2013. Joyce by force with a gang of boys came with jembes and tilled the portion. He reported to chief. Joyce was ordered to stop using the land until matter is settled. Later, he was called to report to police station, claiming of him having uprooted trees from her land. That the police investigated and found that, that was a wrong information. That his prayers to this honourable court is to ask the plaintiff to deposit the land registration in question Nandi/Kemeloi/789 to this honourable court as he suspects the plaintiff wants to sell the land.

**DW2 Mr. Timothy Kilweya** testified that he was the district superintendent of the free Methodist church and retired on in the year 2011. The church bought a piece of land within plot NO. 789 Nandi Kemeloi from one Kipchumba Arap Buluny in the year 1985. That they managed to construct the church on the said portion of which they still use to date to attend prayers. While they have been waiting the communication from Buluny to take them to The Land Board for the consent for subdivision to enable them get title, they were surprised that the plaintiff went privately to the land registrar and was given the land title deed, leaving them out and without the knowledge of the owner Mr. Buluny. He urges this court to compel the Plaintiff, to table before this honourable court all documents transacted before land board and land registrar to enable this court to determine the legality of the title deed. That plaintiff should stop harassing fellow buyers, everybody has his portion well demarcated within Plot No. 789 Nandi-Kemeloi.

**Dw3 Kipchumba Arap Buluny** who testified that he was interested in selling his piece of land, sometime back in 1984, No. 789 Kemeloi. That he sold a portion of land to one Gerishom Chemwok, at a total of 11,800/= (eleven thousand, eight hundred) That in 1986 he sold another portion to one Joyce Nakore Khamati, of Kshs 26,000 (Twenty-six thousand) of which she remained with balance of Kshs 500/= (five hundred) which they agreed was to be paid before the consent of the land control Board which has not been done to date. That further, he managed to sell another portion to Methodist church and plot No. 789 to Mr. Joram Mulama. That he was shocked to learn that the Plaintiff managed to transfer the whole plot No. 789 under her name without his. That the Plaintiff went ahead to file on a case against the defendant with intention defrauding the whole land NO. 789 Nandi Kemeloi.

The **gravamen** of the Plaintiffs submissions is that the court should uphold sanctity of title and refers to Article 60 of the constitution. Section 24 -27 of the Land Registration Act no 3 of 2012. The Plaintiff submits that she is entitled to special and general damages for trespass. The **gist** of the defendant's submissions is that the Plaintiff is not in possession of the whole parcel of land as there are other people living on the land. According to the Defendant, the Plaintiff has not proved his case on a balance of probabilities.

I have considered the submission of both counsel for the parties herein and do find that the plaintiff has proved that he is registered as the absolute, proprietor of the land comprised in Title number Nandi/Kemeloi/789 measuring 1.02 Ha subject to the entries in the Registered relating to the land and to such of the overriding interests set out in section 27 of the Land Registration Act no 3 of 2012.

Sections **24, 25 and 26 of the Land Registration Act no 3 of 2012** envisages the vesting of absolute ownership of land to the person in whose name the property is registered together with all rights and privileges appurtenant thereto and that the rights of a proprietor should be protected as evidenced by the certificate of title unless acquired fraudulently or illegally. This sections provide that: -

**24 Subject to this Act—**

**(a) 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; and**

**(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.**

**25. Rights of a proprietor**

**(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—**

**(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and**

**(b) to such liabilities, rights and interests as affect the same and are declared by [section 28](#) not to require noting on the register, unless the contrary is expressed in the register.**

**(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.**

**26. Certificate of title to be held as conclusive evidence of proprietorship**

**(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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.**

**(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.**

The court finds that the land in dispute is registered in the name of the Plaintiff and that no evidence of fraud or illegality which she is party has been brought before court. I have also considered the evidence on record and do find that the Plaintiff's trees were destroyed by the defendant. **Joseph Kipngetich Mtai** the Agricultural officer visited the disputed parcel and prepared a report. The destructions were assessed at Kshs29,200. Ultimately, I do grant an order of permanent injunction barring the defendant, his agents and or servants from entering, damaging any property belonging to the Plaintiff and that the defendant pays the plaintiff Kshs. 29,200 being the destroyed trees. Costs of the suit are awarded to the plaintiff. Orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 27TH DAY OF FEBRUARY 2017**

**A. OMBWAYO**

**JUDGE**