

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 393 OF 2012

[FORMERLY ELDORET HCCC NO. 182 OF 2007]

WILLY KIPSONGOK MOROGO....PLAINTIFF

VERSUS

ALBERT K. MOROGO.....DEFENDANT

JUDGMENT

Willy Kipsongok Arap Morogo (hereinafter referred to as the plaintiff) has come to court against ***Albert K. Morogo (hereinafter referred to as the defendant)*** claiming that at all times, the plaintiff has been the registered owner of all that parcel of land known as **LR/NANDI/KAPKERER/452**. The plaintiff avers that the defendant has trespassed and encroached into the plaintiff's land and started clearing the same and tilled it without the plaintiff's express knowledge and or consent and has been harassing the plaintiff's employees and or servants to-date. The plaintiff avers that despite his peaceful pleas to have the defendant vacate the land, the defendant has persisted in his unlawful acts to the detriment of the plaintiff's peaceful enjoyment of the land. That the defendant has got no color of right on the land. The plaintiff's claim against the defendant is for an order of permanent injunction restraining the defendant, his servants/agents and or any other person or persons working under him from clearing, tilling, cultivating, entering and or trespassing into LR/NANDI/KAPKERER/452 belonging to the plaintiff and from harassing plaintiff's agents, servants and or employees thereon plus costs and interest of this suit.

The plaintiff states that defendant has been served with demand and notice but has failed, refused and or neglected to comply and that there is no any other suit pending elsewhere between the plaintiff and the defendant on the same subject matter save for Kapsabet PMCC No. 65 of 2007 which was withdrawn. That this court has jurisdiction to hear and determine this matter. The plaintiff prays for an order that an order of permanent injunction restraining the defendant, his servants/agents and or any other person or persons working under him from clearing tilling, cultivating, entering into and or trespassing into LR/NANDI/KAPKERER/452 and harassing, interfering with the plaintiff's employees' occupation plus costs and interest.

The defendant filed defence admitting that the plaintiff is registered as owner of the Plot No. Nandi/Kapkerer/452 but denied that such registration was absolute. The defendant avers that the said parcel of land is shared between the plaintiff and Jonathan Morogo Arap Amware, the father of both parties herein. The defendant denies the plaintiff is entitled to the relief sought at paragraph 7 of the plaint. The defendant and his father occupy one half of the said plot, while the plaintiff occupies the other half. The defendant avers that the plaintiff has in writing admitted owning only part of the said parcel though registered in his name. That the defendant denies having been served with any Notice or demand prior to filing this suit and shall put the plaintiff to strict proof. That the defendant admits paragraph 9 of the Plaint and seeks leave of the court to refer to the pleadings in the said Kapsabet PMCC No. 65 of 2007 for the purpose of this suit.

The matter was scheduled for hearing on 1.2.2017. The defendant was served with a hearing notice but failed to appear and therefore the matter proceeded for hearing as scheduled. The plaintiff testified that he is a farmer by profession. He bought the parcel of land No. Nandi/Kapkerer/452. He bought the land from Ezekiel Kiptanui Chebeng and a piece of the same from Andrea Muruon which has since been amalgamated into one piece. He produced the title deed as PEx.1. He produced the death certificate of Ezekiel Chebeng Kiptanui. When he bought the land, he was living in Nairobi and chose his late father to

occupy the land in 1978. During demarcation, his late father registered the land in his name as Willy Kipsongok Morogo. His name was not properly written in the register and he had to pay some money for the correction of name. He prays that his step brother vacates the land. PW2, Simon Kiplagat Tanui is a carpenter by profession in Nandi County. The plaintiff is his former chief. His father sold the plaintiff the land in dispute. His father's name is Ezekiel Tanui Arap Chebeng. The land was sold by his father in 1975.

I have considered the pleadings and the evidence on record and do find that the plaintiff has demonstrated on balance of probability that he bought the portion of the suit land from Ezekiel Kiptanui Chebeng and another portion from Andrea Muruon. The two were amalgamated to create Nandi Kapkerer/452. He is now the registered as absolute proprietor of the said parcel of land comprised in the above-mentioned title subject to the entries in the register relating to the land and the such of the overriding interests as may for the time being subsist and affect the land. I do find that the plaintiff's evidence is not controverted that he is the registered proprietor of the suit parcel.

Section 24 of the Land Registration Act 2012 provides that 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*** that 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.

Section 25 of the said Act provides that 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 the 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 to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and 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 and that nothing in the section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

Section 26 provides that 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—on the ground of fraud or misrepresentation to which the person is proved to be a party where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

The evidence on record shows that the suit parcel of land is registered in the names of the plaintiff and therefore the plaintiff is entitled to the protection under sections 24, 25 and 26 of the Land Registration Act 2012.

I have considered the plaintiff evidence on record and do find that the plaintiff has proved his case on a balance of probabilities and therefore, he is entitled to the prayers sought. Ultimately, the court finds that the plaintiff is entitled to the orders sought and therefore a permanent injunction is hereby issued restraining the defendant, his servants/agents and or any other person or persons working under him from clearing tilling, cultivating, entering into and or trespassing into LR/NANDI/KAPKERER/452 and harassing, interfering with the plaintiff's employee's occupation plus costs and interest.

DATED AND DELIVERED AT ELDORET THIS 10TH DAY OF FEBRUARY, 2017.

ANTONY OMBWAYO

JUDGE