



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L 218 OF 2016

GREGORY KIBIY KIPLAGAT..... PLAINTIFF

VERSUS

JOSEPH K. CHEBORE..... DEFENDANT

JUDGMENT

INTRODUCTION

By a plaint dated 30th July 2016 the plaintiff herein sued the defendant seeking for orders for:

- a) That the Plaintiff is the legal owner of land parcel UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/1047.
- b) That the Defendant's occupation and use of land parcel UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/1047 is unlawful
- c) Eviction against the Defendant from land parcel UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/1047.
- d) A permanent injunction restraining the defendant and or his agents from further encroaching on or in any other way interfering with the Plaintiff's peaceful enjoyment of land parcel UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/1047.
- e) Costs.

The defendant was served with summons to enter appearance on 11th August 2016 but never entered appearance as required by law within the stipulated period. The plaintiff thereafter set down the suit for formal proof on 15th March 2017.

Plaintiff's Case

The plaintiff testified and called one witness. He adopted his statement dated 30th July 2016 as evidence before the court. It was the plaintiff's case that he has sued the defendant herein in respect of the suit land namely UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/1047 which is registered in the plaintiff's name. He produced a copy of the title deed and the same was marked as exhibit No. 1. He stated that he was issued with the title on 17th July 2015. The plaintiff further stated that he bought the suit land from one Julius Chepsoi Chepkieny on 13th November 2012 whom they entered into a sale agreement which he produced as exhibit No.2. It was the plaintiff's evidence that when he bought the

land it was not in the seller's name but in the name of one Benjamin Kipchumba Chemisto who was the original owner. That the Vendor had purchased the suit land but decided to dispose of it before the title was registered in his name.

The plaintiff testified that the suit land had not yet been transferred to Julius Chepsoi who sold the land to him. They wrote a Memorandum of understanding on 26th November 2012 amongst the three and agreed that the original owner BENJAMIN KIPCHUMBA CHEMISTO would transfer the suit land to the plaintiff.

It was the plaintiff's case that the title deed was subsequently transferred in his favour on 17th July 2015. The plaintiff stated that he later came to learn that someone had ploughed his land and upon inquiry he realized that the initial owner PW2 had leased the land to the defendant for a period of 3 years in 2006. The MOU was produced as exhibit No. 3. He stated that the defendant has refused to vacate the suit land even after the expiry of the lease period. The defendant was served with a demand notice to vacate the suit land but he did not respond. The demand letter was produced as exhibit No. 5. The plaintiff therefore prayed for orders as pleaded in the plaint.

PW 2 One Benjamin Kipchumba testified and stated that he was the one who sold the suit land to Julius Chepsoi who later sold it to the plaintiff herein. He stated that the title deed was still in his name but they wrote an MOU to the effect that he would transfer the land directly to the plaintiff herein which was done. PW 2 also stated that he recorded a statement dated 30/7/16 which he urged the court to adopt as evidence before the court and the same was done. He confirmed the plaintiff's testimony.

Analysis and Determination

The issues for determination are clear.

1. Whether the plaintiff is the rightful owner of land parcel No. UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/1047
2. Whether the defendant is in illegal occupation of the suit land.
3. Is the plaintiff entitled to the orders sought?

The plaintiff produced a title deed of the suit land registered in his name. There was no evidence that it was fraudulently acquired. The production of a title deed registered in his name is prima facie evidence that the plaintiff is the rightful owner of the suit land. There was also no evidence to counter the claim that the plaintiff is the registered owner. PW 2 one BENJAMIN KIPCHUMBA CHEMISTO the original owner confirmed the plaintiff's testimony by giving an account how he transferred the suit land to the plaintiff. This therefore answers issue No. 1 as to whether the plaintiff is the rightful owner of the suit land. I find that the plaintiff is the owner of the suit land.

The plaintiff testified that he came to learn that before he bought the suit land, PW 2 had leased the land for a period of 3 years to the defendant in the year 2006 which lease had expired by the time the plaintiff bought the land. The defendant continued to plough and use the suit land without the plaintiff's consent. The plaintiff wrote a demand letter to the defendant through his lawyers asking him to vacate but the defendant did not respond. This shows that the defendant has been in illegal occupation and use of the plaintiff's land.

Is the plaintiff entitled to the prayers sought in the plaint? Having answered the two issues above in the affirmative, I find that the plaintiff has proved his case against the defendant and is therefore entitled to the prayers sought.

I therefore make the following orders:

- a) A declaration that the Plaintiff is the legal owner of land parcel No. UASIN

GISHU/KIPKABUS SETTLEMENT SCHEME/1047 and the defendant's occupation and use is unlawful.

b) That the defendant do vacate the suit land within 30 days upon service of this judgment or decree. In default of so vacating, an eviction order be issued permitting the plaintiff to evict the defendant from the suit land parcel UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/1047.

c) A permanent injunction restraining the defendant and or his agents from further encroaching on or in any other way interfering with the Plaintiff's peaceful enjoyment of land parcel UASIN GISHU/KIPKABUS SETTLEMENT SCHEME/1047.

d) Costs of the suit to the plaintiff.

Dated and delivered at Eldoret on this 24th day of May, 2017.

M.A ODENY

JUDGE