



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.225 OF 2015

JULIUS CHEPKOIWO CHESAROPLAINTIFF

VERSUS

JULIUS ROTICHDEFENDANT

JUDGMENT

(Suit by the plaintiff seeking orders to have the defendant evicted from his land; plaintiff being the registered proprietor of the land and having a title deed; no defence filed by the defendant; plaintiff's case succeeds with costs)

1. This suit was commenced by way of a plaint that was filed on 6 August 2015. The plaintiff has pleaded that he is the registered owner of the land parcel Nakuru/Kapsita/1609 measuring approximately 2 hectares. He has pleaded that on 16 July 1997 he obtained the title deed to this land. He has pleaded that on 29 October 2013, the defendant, without any colour of right invaded the said land and ploughed it and has since refused to vacate. In the suit, the plaintiff has sought orders that he be declared the rightful owner of the suit land, an order of eviction of the defendant from the said land, and a permanent injunction against the defendant.

2. Despite being served with summons, the defendant did not enter appearance and neither did he file any defence. He also did not appear at the hearing of the matter despite being served with a hearing notice.

3. In his evidence, the plaintiff testified that he was allocated the suit land in the year 1997 and was issued with a title deed. He testified that he used the land until the year 2007/2008 when he left the area owing to clashes (presumably the post election violence that followed the election of the year 2007). When he went back in the year 2009, he found the defendant on the land. He reported to the Chief and later the police. They tried to trace the defendant in vain. On 29 January 2014, he issued the defendant with a demand notice but he has still refused to vacate. He produced the title deed and a copy of the Green Card to prove that he is the registered owner of the land.

4. The case of the plaintiff is uncontroverted by the defendant. I have seen for myself the title deed issued to the plaintiff and the Green Card which show that the plaintiff is the registered proprietor of the suit land. The defendant has not come to court to state why he should be allowed to continue being on the suit land.

5. As the proprietor, the plaintiff is entitled to all rights of ownership including the right of ingress, egress, and exclusive possession. These rights are granted by Section 25 of the Land Registration Act, 2012, which provides as follows :-

25. (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.

6. The defendant has not demonstrated that he holds any identifiable right over the suit land. He has not demonstrated that he has any right to enter into the plaintiff's land and cultivate it. He cannot therefore defeat the rights of the plaintiff as proprietor and he must keep off the plaintiff's land.

7. I therefore enter judgment for the plaintiff and make the following orders :-

(i) That it is hereby declared that as between the plaintiff and defendant, it is the plaintiff who is the owner of the land parcel Nakuru/Kapsita/1609. It is further declared that the defendant has no rights whatsoever over the said land parcel Nakuru/Kapsita/1609.

(ii) That the defendant is hereby ordered to vacate the land parcel Nakuru/Kapsita/1609 no later than 14 days after service upon him of this judgment and/or decree and if he does not do so, the plaintiff is at liberty to apply for his eviction.

(iii) That a permanent injunction is hereby issued directing the defendant to cease being in possession of the land parcel Nakuru/Kapsita/1609 and not to attempt to take possession of the said land or in any other way interfere with the plaintiff's occupation of it.

(iv) The plaintiff shall have the costs of this case.

8. It is hereby ordered.

Dated, signed and delivered in open court at Nakuru this 16th day of May 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :

No appearance on the part of parties and counsels.

Court assistant : Nelima Jenepher

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU