



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 354 OF 2016

SAMUEL KIPKURGAT SOI.....PLAINTIFF

VERSUS

JOHN KIPKOECH SOI.....DEFENDANT

JUDGMENT

Samuel Kipkurgat Soi filed suit by way of plaint against **John Kipkoech Soi** claiming that he is the registered owner of land parcel **No. Nandi/Chepkongony/472**. That at all material times to this suit, the plaintiff is the registered owner of land parcel Nandi/Chepkongony/472. That the defendant is illegally in occupation of the said parcel Nandi/Chepkongony/472 and has constructed a house therein. That the defendant has no legal rights to either claim or occupy the said Nandi/Chepkongony/472. That despite several requests, the defendant has refused to move out of the land, Nandi/Chepkongony/472.

The plaintiff's claim against the defendant is for orders of eviction of the defendant, his agents and or servants out of Nandi/Chepkongony/472. That there is no suit pending between the plaintiff, the defendant and the Aldai Land Disputes Tribunal and Land Registrar, Nandi County save E & L No. 412 of 2013, Eldoret High Court which was finalized. That this court has jurisdiction to hear and determine this suit. He prays for an order of eviction of the defendant, his agents, servants and family out of the suit land. The defendant was served but failed to enter appearance or file defence.

When the matter came for hearing, the plaintiff testified that he is the farmer and a resident of Timboroa. That he is the registered owner of L. R. No. Nandi/Chepkongony/472 and that on 19th April, 1977, he bought land parcel Nandi/Chepkongony/472 from one Kibet Rono and he paid Kshs.6,000/= . That he has a copy of Sale Agreement which he shall produce in court. That the said Kibet Rono applied and obtained consent of Land Control Board for transfer of whole of land to him. That he has a copy of the application for transfer and consent for Aldai Land Control Board for transfer of land to him. That on 19th October, 1981, he obtained a Title Deed in his name. He produced the Title Deed in court as an exhibit. The defendant is in illegal occupation of his land as from 4th January, 2002.

That he has requested him to move out of land in vain. The defendant who is his brother has no legal documents to claim ownership of his land. He applies that the court do issue an order of eviction against the defendant out of his land parcel registration Number Nandi/Chepkongony/472. He prays for costs.

I have considered the pleadings and evidence on record and do find that the plaintiff has proved on a balance of probabilities that he is the absolute owner of the suit land.

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. These 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 plaintiff is the sole registered proprietor of the Suitland and therefore is the absolute proprietor of the same. the upshot of the above is that I do grant an order of eviction of the defendant, agents, servants or family out of the suit land. Costs to the plaintiff. The plaintiff to give one months' notice. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 21ST DAY OF JULY, 2017.

A. OMBWAYO

JUDGE