



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 164 OF 2016

**PRESENT TRUTH FELLOWSHIP (K).....
PLAINTIFF**

VERSUS

**TERESIA WANJIRU.....1ST
DEFENDANT**

**JOSHUA WEKESA.....2ND
DEFENDANT**

**ROBERT OMBWODU.....3RD
DEFENDANT**

JUDGMENT

Present Truth Fellowship (K) (*herein after referred to as the Plaintiff*) has come to court against Teresa Wanjiru, Joshua Wekesa and Robert Ombwodu herein after referred to as defendants claiming that at all material times the Plaintiff is the legitimate *bonafide* and registered owner of all that piece of land known, called and designed as Land Parcel Number Nzoia/Moi’s bridge Block 1 (Nzoia Sisal) 1875 measuring 0.350 Ha or thereabout having bought the said land for value and took vacant and physical possession thereof. On or about the year 2011 or thereabout the Defendants herein unlawfully and illegally encroach onto and purported to unlawfully copy the plaintiff’s suit Parcel of Land number Nzoia Moi’s Bridge Block (Nzoia Sisal) 1875 measuring 0.350 Ha or thereabout.

The Plaintiff’s claim against the Defendant is an Order permanently restraining the Defendants from further encroaching, trespassing onto and/or in any other manner interfering with the Plaintiff’s use, possession and ownership of all that Land Parcel Number Nzoia/Moi’s Bridge Block 1(Nzoia Sisal)1875 measuring 0.350 Ha or thereabout. The Plaintiff further avers that it has never authorized the Defendants to deal with the suit land in whatever manner without its consent and/or authority. That the Plaintiff’s suit against the Defendants is for a declaration that the suit land Nzoia/Moi’s bridge Block 1(Nzoia Sisal)/1875 measuring 0.350 Ha. Belongs to the plaintiff and an eviction order to issue against the Defendants. The Defendants have on several occasions threatened and attempted to displace the plaintiff from the suit land to Plaintiff’s detriment.

The Plaintiff ultimately prays for an order for permanent injunction restraining the Defendants by themselves, servants and/or agents from interfering, trespassing, intermeddling and/or in any other manner dealing with the Plaintiff’s use, possession and/or ownership of all that Land Parcel Number Nzoia/Moi’s bridge Block 1 (Nzoia Sisal) 1875 measuring 0.350 Ha or thereabout. An Order evicting the Defendants from Land Parcel Number Nzoia/Moi’s bridge Block 1 (Nzoia Sisal) 1875 measuring 0.350

Ha or thereabout.

When the matter came up for hearing it was confirmed that the Defendant had been served with the hearing notice but failed to attend. Pastor Gabriel Ouma Mulupi testified that he is the Director of the Plaintiff and that he knows that Plaintiff is the registered proprietor of the Land Parcel Number Nzoia Moi's Bridge Block 1(Nzoia Sisal) 1875 measuring 0.350 Ha. or thereabout which was acquired by for value and subsequently took vacant and physical possession thereof. That it was until 2011 or thereabouts when the Defendants herein trespassed onto the suit property herein with aim of dispossessing the Plaintiff herein which actions are unlawful, illegal and malicious.

The Plaintiff filed this suit through him seeking inter alia a declaration that the Plaintiff is the owner of Land Parcel Number Nzoia Moi's Bridge Block 1 (Nzoia Sisal) 1875 measuring 0.350 Ha. or thereabout and an Order for a permanent injunction restraining the Defendants by themselves, agents and or servants from interfering with it in any manner whatsoever. The Plaintiff's Director produced a certificate of registration No. 21322 as proof that the Plaintiff was registered under societies Act 1968. It was registered on 18.4.2002. The constitution was amended on 15.7.2005 and the name changed to Present Truth Fellowship (K). PW1 further produced an agreement as evidence that dated 24.10.2000 as evidence that the parcel of land was purchased by the Plaintiff from Mrs Maria Kasei Lunyaji. The land was finally registered in the name of Present Truth Fellowship on the 11.10.2006. The Plaintiff produced photograph depicting how the defendants have encroached on the parcel of land. The plaintiff further produced a demand notice dated 10.6.2016.

After considering the evidence on record and the documents produced in court, I do find that the plaintiff is the registered owner of the property in dispute. **Section 6 (1) of the Registered land Act cap 300 laws of Kenya (repealed)** provides that there shall be maintained in each registration district a land registry, in which there shall be kept - (a) a register, to be known as the land register, in accordance with Division 2; (b) the registry map; (c) parcel files containing the instruments which support subsisting entries in the land register and any filed plans and documents;(d) a book, to be known as the presentation book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;(e) at the discretion of the Chief Land Registrar an index, in alphabetical order, of the names of the proprietors. This section is similar to Section 7 of the Land Registration Act 2012. The import of this sections is that the register as kept by the registrar shall be the final record in respect to proprietorship of land in the registration area.

Section 27 of the Registered Land Act (repealed) provides 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;(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 and expressed agreements, liabilities and incidents of the lease.

Section 28 of the said repealed law provides that the rights of a proprietor, whether acquired on first registration or whether acquired 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) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register: Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.

The same was repealed by the **Land Registration Act, 2012. Section 24 provides** for interest conferred upon registration thus Subject to the 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. **Section 25** provides for the rights of a proprietor thus: -

(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. **Section 26** provides for Certificate of title to be held as conclusive evidence of proprietorship thus: -

(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 import of the above is that the Plaintiff has proved on a balance of probabilities that he is registered proprietor of the parcel of land and therefore enjoys absolute rights of ownership apportionment thereto and therefore entitled to the orders prayed for. I do hereby issue an order that the defendants ***do vacate*** the suit parcel of land ***within 45-day***, whose notice shall be issued by the plaintiff, failure of which they be forcefully evicted from Land Parcel Number Nzoia/Moi's bridge Block 1 (Nzoia Sisal) 1875 measuring 0.350 Ha or thereabout and a permanent ***injunction restraining*** the Defendants by themselves, servants and/or agents from interfering, trespassing, intermeddling and/or in any other manner dealing with the Plaintiff's use, possession and/or ownership of all that Land Parcel Number Nzoia/Moi's bridge Block 1 (Nzoia Sisal) 1875 measuring 0.350 Ha or thereabout. Orders accordingly.

Dated and delivered at Eldoret on this 1st day of August, 2017.

A. OMBWAYO

JUDGE