



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 102 OF 2015

PETER WAFULA KHAEMBA..... PLAINTIFF

VERSUS

MARY CHELIMO SIRIMA.....1ST DEFENDANT

KEMBOI.....2ND DEFENDANT

SHADHAN KIPTOO.....3RD DEFENDANT

KIPCHOKE.....4TH DEFENDANT

KIPLETING.....5TH DEFENDANT

MARITIM.....6TH DEFENDANT

JOEL KIPTOO.....7TH DEFENDANT

JUDGMENT

Peter Wafula Khaemba (hereinafter referred to as the plaintiff) has come to court against **Mary Chelimo Sirima and 6 Others** claiming that he is at all times to this suit the registered owner and or the equitable owner of that parcel of land **UASIN GISHU/NGENYILEL/76** measuring approximately 15.5 Ha. That the defendant has without any colourful rights entered and started interfering with the said parcel thus encroaching on the plaintiff's parcel of land contrary to the vesting propriety rights of the plaintiff as the legal and or owner of the aforesaid parcel of land to the plaintiff's detriment.

The plaintiff's claim against the defendants is for a declaration that the defendants are trespassers onto the land parcel UASIN GISHU/NGENYILEL/76 and that the plaintiff is the legal owner of all that parcel of land known as UASIN GISHU/NGENYILEL/76. The plaintiff prays for an order of eviction evicting the defendants, their servants, agents and or employees from land parcel UASIN GISHU/NGENYILEL/76. That upon the defendants vacating land parcel UASIN GISHU/NGENYILEL/76, the plaintiff prays for an order of permanent injunction restraining the defendants from trespassing into the plaintiff's land parcel UASIN GISHU/NGENYILEL/76 or in any other way interfering therewith. Last but not least the plaintiff prays for costs and interest.

The plaintiff testified that all the times to this suit, he is the registered owner and or the equitable owner of that parcel of land UASIN GISHU/NGENYILEL/76. That the defendants have without any color of rights entered and started interfering with the said parcel thus encroaching on his parcel of land contrary to the vesting proprietary rights. That his claim against the defendants if for permanent injunction

restraining the defendants, their agents from interfering with the peaceful use and enjoyment of his quiet possession of the aforesaid parcel of land and or to do any other act that is inconsistent with him as he is the proprietor of the aforesaid parcel of land. That he also claims against the defendants for a declaration that the defendants are trespassers onto the land parcel UASIN GISHU/NGENYILEL/76 and that he is the legal owner of all that parcel of land known as UASIN GISHU/NGENYILEL/76. That he also prays for eviction order evicting the defendants, their servants, agents and or employees from land parcel UASIN GISHU/NGENYILEL/76 and costs of the interest of the suit.

I have considered the evidence on record and do find that the plaintiff has proved on a balance of probabilities that he is the registered owner of Uasin Gishu/Ngenyilel/76. The defendants are the trespassers on the said land.

Section 24 of the Land Registration Act, 2012 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 privilege 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.

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 interest and claims whatsoever, but subject-
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.

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 plaintiff has established on a balance of probabilities that he is the registered proprietor of the suit property and therefore he is entitled to the prayers sought. The upshot of the above is that judgment is entered for the plaintiff in terms of a declaration that the defendants are trespassers onto the land parcel UASIN GISHU/NGENYILEL/76 and that the plaintiff is the legal owner of all that parcel of land known as UASIN GISHU/NGENYILEL/76. The defendants to vacate the suit parcel within 45 days failure of which plaintiff is granted an order of eviction evicting the defendants, their servants, agents and or employees from land parcel UASIN GISHU/NGENYILEL/76. That upon the defendants vacating land

parcel UASIN GISHU/NGENYILEL/76, an order of permanent injunction is hereby issued restraining the defendants from trespassing into the plaintiff's land parcel UASIN GISHU/NGENYILEL/76 or in any other way interfering therewith. The plaintiff is granted costs and interest. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 29TH DAY OF SEPTEMBER, 2017.

A. OMBWAYO

JUDGE