



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO.20 OF 2014

WILSON KETER KOIMA..... PLAINTIFF

VERSUS

CHEBET KANDIE.....1ST DEFENDANT

MOSES CHESIRE2ND DEFENDANT

JUDGMENT

By a plaint dated 24th January 2014 the plaintiff herein sued the defendants for an order of eviction from land parcel known as UASIN GISHU/KAPTAGAT/478 and costs of the suit.

The defendant was served with summons to enter appearance but never filed any documents. The plaintiff filed an affidavit of service and proceeded with the formal proof 13th June 2017.

The plaintiff testified and called no witness. He stated that he knew the defendants as his neighbors in KAPTAGAT scheme 470. He produced a certified copy of the title of land parcel known as UASIN GISHU/KAPTAGAT/478 registered in his name and stated that the original was in court as he had stood surety for his son.

He further produced certified extracts of the register belonging to the defendants' parcel Nos 370 and 371 respectively which parcels sandwich the plaintiff's parcel of land. The plaintiff also produced a copy of a map to show the position of his parcel of land. He testified that each person has his portion of land but the defendants fenced off the plaintiff's portion. He urged the court to grant his prayers for eviction of the defendants. The plaintiff therefore closed his case.

Counsel for the plaintiff Mr. Kigamwa filed written submissions in respect of the plaintiff's case. He reiterated the plaintiff's evidence and listed down the issues for determination as follows:

1. Who is the registered proprietor of land parcel known as UASIN GISHU/KAPTAGAT/478 measuring 0.20 Hectares?
2. Whether the defendants are trespassers on the land parcel known as UASIN GISHU/KAPTAGAT/478
3. Whether the defendants hold any valid purchase interests of land parcel known as UASIN GISHU/KAPTAGAT/478
4. Whether the plaintiff's suit is competent

5. Whether the plaintiff is entitled to the remedies sought

6. Who should bear the costs of this suit.

Counsel went ahead to analyze the issues above and submitted that the plaintiff had proved his case against the defendants.

Issues and determination

The issues for determination by the court are as to whether the plaintiff is the registered owner of the suit land and whether the defendants are trespassers on the said land. Is the plaintiff entitled to the orders sought in the plaint?

The plaintiff proved that he is the registered owner of the suit land by producing a copy of the title which was not controverted by any evidence. Registration as an owner is prima facie evidence that the person named as proprietor of the land is indefeasible unless it was obtained by way of misrepresentation or fraud. If such can be established in accordance with section 26 of the Registration of Land Act 2012 then the same can be cancelled. There was no evidence that the title was obtained fraudulently or by way of misrepresentation.

From the documents produced and from the evidence adduced by the plaintiff I find that the plaintiff has proved to be the registered owner of UASIN GISHU/KAPTAGAT/478.

The second issue is as to whether the defendants are trespassers on the plaintiff's land. The plaintiff stated that upon acquiring the land the defendants fenced off his parcel of land and has been unable to utilize the same. The defendants are therefore in illegal occupation of the plaintiff's land. The plaintiff produced extracts of the defendants' parcel of land and a map showing the respective parcels of land. Counsel relied on the case of **Michael Githinji Kimotho -V- Nicholas Muratha Mugo Civil Appeal No. 53 of 1995**.

The defendants have not proved any proprietary interest in the suit land. The defendants have their own parcels of land which were exhibited by the plaintiff. There is no reason why the defendants are illegally occupying the plaintiff's parcel of land. In the circumstances, I find that they are trespassers who should be evicted from the suit land.

I accordingly enter judgement against the defendants and make the following orders:

1. That the defendants 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 defendants from land parcel No. UASIN GISHU/KAPTAGAT/478
2. Costs of the suit to the plaintiff.

Dated and delivered at Eldoret on this 26th day of September, 2017.

M.A ODENY

JUDGE

Read in open court in the presence of:

Mr. Mogambi for the Plaintiff

Koech – Court Assistant

No appearance for defendant.