



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

ELC CAUSE NO. 527 OF 2016

ELIAB MORRIS OMBOGO.....PLAINTIFF

-VERSUS-

NELSON OCHIENG.....DEFENDANT

JUDGEMENT

The suit herein was commenced by way of a plaint dated 8th February, 2011.

The Plaintiff has pleaded that at all material times to this suit he was the sole registered owner of land parcel No. **WEST KASIPUL/KODERA KARABACHI/21** measuring 2.0 hectares and that he was the absolute owner of the said land. He pleaded that he purchased the land in 1982 and he has been in actual possession of the same.

The Plaintiff avers that on or about 23rd December, 2008 the Defendant invaded the portion of the said land and erected a semi-permanent structure consequent to which the Plaintiff reported the matter to the police and the Defendant charged with forcible detainer and fined kshs. 20,000/- and the defendant vacated the land but again in 2010 he unlawfully erected a semi-permanent structure without the authority of the plaintiff and hence the plaintiff suffered loss and damage.

In the suit the Plaintiff has claimed the following reliefs:-

- (a) A permanent injunction restraining the Defendant by himself, agents, servants from trespassing and interfering with the plaintiff's peaceful enjoyment of the parcel of land known as **WEST KASIPUL/KODERA/KARABACHI/21**.
- (b) Eviction order
- (c) Costs
- (d) Interest

The suit proceeded before me for hearing on 31st March, 2017 only the plaintiff testified as the Defendant opted not to attend the hearing. The plaintiff testified that he is the registered owner of the suit land and has produced a copy of title as an exhibit which shows that the suit land is registered in his name and that he has been the owner and in occupation of the land for over 20 years.

The Plaintiff recalled that in 2010 the Defendant had trespassed on the suit land and started constructing on the same without his authority or approval and he reported the matter to the police leading to the arrest and prosecution of the Defendant for trespass wherein he was convicted. The plaintiff produced certified copies of the proceeding in Oyugis Chief Magistrate Criminal Case No. 1076 of 2008 which showed the entire proceedings, conviction and sentence of the defendant.

The Plaintiff stated that despite the said conviction the Defendant has failed to move out of the land and give the plaintiff occupation and continues to do and hence he asked the court to issue an injunction restraining the Defendant, and an order of eviction do issue.

I have considered the pleadings before me and the testimony of the plaintiff. I have no doubt that the plaintiff is the registered and absolute owner of the land known as **WEST KASIPUL/KODERA/KARABACHI/21** as shown in the certificate of title that was issued. I am also not in doubt that the Defendant herein has by the dint of the proceedings before the Oyugi's Chief Magistrate's Court been charged and convicted of trespass with respect to the plaintiff's land.

In view of the above the plaintiff's case succeeds as he has proved the same on a balance of probabilities and I make the following orders:-

(a) A permanent injunction is hereby issued restraining the defendant, his agents, servant from trespassing or in any manner interfering with the plaintiff quite enjoyment and possession of parcel No. KASIPUL/KODERA/KARABACHI/21.

(b) The Defendant do forthwith vacate from land parcel WEST KASIPUL/KODERA/KARABACHI/21 within 90 days from the date of this judgement and if he fails to vacate an order of eviction be issued against the Defendant

(c) Costs of the suit be borne by the Defendant.

It is so ordered.

DATED, SIGNED and DELIVERED in open court at **KISII** on this **19th October, 2017.**

Mohammed Noor Kullow

Judge

In the presence of:-