



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**

**ELC NO.230 OF 2016**

**EMILY KOECH.....PLAINTIFF**

**VERSUS**

**ZIPPORAH NYAMOITA MWANGI.....1<sup>ST</sup> DEFENDANT**

**UASIN GISHU COUNTY LAND REGISTRAR.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

By a plaint dated 17<sup>th</sup> August 2016, the plaintiff sued the defendants for orders for:

1. A declaration that the certificate of lease of Title No. **ELDORET MUNICIPALITY BLOCK 11/327** issued to the 1<sup>st</sup> defendant is null and void and the same be recalled by the 2<sup>nd</sup> defendant for purposes of cancellation.
2. An order of eviction against the 1<sup>st</sup> defendant to vacate the parcel of land referred to as **ELDORET MUNICIPALITY BLOCK 11/327**.
3. A permanent injunction order barring the 1<sup>st</sup> defendant from interfering with the plaintiff's peaceful use of all that parcel of land referred to as **ELDORET MUNICIPALITY BLOCK 11/327**.
4. Any other remedy the Honourable court may deem fit to grant.
5. Costs of the suit plus interest.

The defendants were served with the summons to enter appearance but failed to do so within the stipulated time. The plaintiff therefore set down the case for formal proof but served the defendants with a hearing notice as was directed by the court. The defendants were served as per the affidavit of service in the court file.

**Plaintiff's Case**

This matter came up for hearing of 10<sup>th</sup> July 2017 when the plaintiff testified and stated that she purchased the suit plot from Kimaiyo Biana on 16<sup>th</sup> August 1994 as per the sale agreement which she produced as exhibit No.1. She also produced an allotment letter dated 22/5/96, a letter for consent to transfer, and an official search confirming that the suit land is registered in the 1<sup>st</sup> defendant's name. The plaintiff also stated that she went to her lawyers who wrote a letter dated 3/6/16 to the Municipal Council

Inquiring of the status of the plot. The plaintiff further produced a letter dated 25/7/16 from the Uasin Gishu County government confirming that the plaintiff is the owner of the suit plot.

It was the plaintiff's case that the 1<sup>st</sup> defendant is in possession of the suit land illegally and that she also has title which she fraudulently acquired. The plaintiff also averred that the 1<sup>st</sup> defendant's title should be declared null and void and should be recalled for cancellation. She urged the court to grant the orders as prayed in the plaint.

### **Plaintiff's Counsel's Submissions**

Counsel for the plaintiff filed written submissions and reiterated the plaintiff's testimony and urged the court to enter judgement for the plaintiff as prayed.

### **Analysis and Determination**

The plaintiff gave evidence and produced documents to support her case which was uncontroverted as the defendants neither entered appearance nor filed a defence in this case. The law is clear on indefeasibility of title upon registration as per section 24, 25, and 26 of the Land Registration Act 2012.

Section 25 specifically provides that

*"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 the proprietor together with all other interests and claims whatsoever"*

Section 26 of the Land Registration Act 2012 further provides: -

*"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 conditions contained as endorsed in tile certificate and the title for 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, un-procedurally or through a corrupt scheme."*

This case falls under the purview of section 26 above which provides that a title or certificate of title can be challenged on the ground of fraud or misrepresentation or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. The plaintiff specifically pleaded fraud on the part of the defendant and gave the particulars as required by law and procedure. She also led evidence and produced documents from the County government showing that the suit land belongs to her.

The defendants were given an opportunity to defend themselves but they did not do so. Having analyzed the pleadings, evidence, exhibits, submissions and the judicial authorities I hereby enter judgement for the plaintiff against the defendants and make the following orders:

1. A declaration that the certificate of lease of Title No. **ELDORET MUNICIPALITY BLOCK 11/327** issued to the 1<sup>st</sup> defendant is null and void and the same be recalled by the 2<sup>nd</sup> defendant for purposes of cancellation.
2. That the 1<sup>st</sup> defendant do vacate the parcel of land referred to as **ELDORET MUNICIPALITY BLOCK 11/327** within the next 45 days upon service of this judgment or decree, in default of so vacating, an order of eviction be issued against the 1<sup>st</sup> defendant from parcel of land No

**ELDORET MUNICIPALITY BLOCK 11/327.**

3. A permanent injunction is hereby issued barring the 1<sup>st</sup> defendant from interfering with the plaintiff's peaceful use of all that parcel of land referred to as **ELDORET MUNICIPALITY BLOCK 11/327.**

4. The defendant to pay costs of this suit to the plaintiff.

Dated and delivered at Eldoret on this 18<sup>th</sup> day of October, 2017.

**M.A ODENY**

**JUDGE**