



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 392 OF 2013

KIBET RUTO:.....PLAINTIFF

VERSUS

SAMUEL KIPLETING BETT:.....DEFENDANT

JUDGMENT

By a plaint dated 16th July 2013 the plaintiff herein sued the defendant for orders of a permanent injunction restraining the defendant from trespassing into his land parcel No. KIPLOMBE/KIPLOMBE BLOCK 4 (KIPLOMBE)/305. The plaintiff also prayed for costs of the suit.

The plaintiff contemporaneously with the plaint filed an application for a temporary injunction under certificate of urgency to restrain the defendant from trespassing with the suit land.

I notice from the court record that the court noted that the matter involved close relatives and asked Mr. Birech a Senior Advocate who was in court to try mediation. The parties agreed to this path but after two meetings Mr. Birech reported to court that the parties were not able to agree. They insisted that the matter do proceed for full hearing.

The court ordered that the status quo be maintained by both parties on 19th February 2014, whereby the status quo was that the defendant do occupy and use 1.6 acres of the suit land until the matter is heard and determined.

This case came up for hearing on 12th July 2017, when the plaintiff testified and closed his case. The hearing date was taken in court and an affidavit of service filed showing that the defendant was duly served with a hearing notice. The case therefore proceeded in the absence of the defendant.

It was the plaintiff's testimony that he is the registered owner of all that parcel of land known as KIPLOMBE/KIPLOMBE BLOCK 4 (KIPLOMBE)/ 305 measuring 0.83 Ha or thereabouts. The plaintiff produced a certified copy of the title deed as exhibit 1. It was the plaintiff's evidence that the defendant encroached on his said parcel of land in 2013. The plaintiff also produced a clearance form from KIPLOMBE FARM LTD which was the vehicle for purchasing land by recruiting members and subsequently distributed to the bona fide members. The plaintiff therefore urged the court to grant prayers as per the plaint.

Mr. Melly counsel for the plaintiff submitted that the plaintiff had proved that he is the registered owner of the suit land by producing a copy of the title and a clearance form from KIPLOMBE FARM LTD which he bought the plot from.

Counsel also submitted on indefeasibility of title as per section 24, 25 and 26 of the Land Registration Act of 2012. There was no evidence that the title was acquired through fraud or misrepresentation. Counsel further submitted that the defendant has also not proved that he has an overriding interest on the suit land.

Mr. Melly therefore urged the court to grant the plaintiff's prayer for a permanent injunction restraining the defendant from trespassing on the suit land and an order for eviction.

Issues and Determination

The issues in this case are as to whether the plaintiff is the registered owner of the suit land and whether the defendant has trespassed on the plaintiff's land. Is the plaintiff entitled to the prayers sought? The defendant was not present to give his side of the story but the court looked at the pleadings in their totality. The fact that a suit is not defended does not mean that it is a walk over for the party present. A party is under a duty to prove his/her case failure of which it can still be dismissed even in the absence contrary evidence.

I have considered the plaintiff's evidence, the exhibits produced and the submissions of counsel and I agree with counsel that the plaintiff has proved his case on a balance of probabilities. The plaintiff being the registered owner of the suit land as evidenced, is therefore entitled to quiet possession and enjoyment of his property. We must follow the law on indefeasibility of title as stipulated under the land Registration Act 2012.

Having said that I therefore enter judgement in favour of the plaintiff and make the following orders:

1. That a permanent injunction is hereby issued restraining the defendant whether by himself, his/her agents, servants, nominees or whomsoever acting or claiming through them from interfering with the plaintiff's parcel of land known as KIPLOMBE/KIPLOMBE BLOCK 4 (KIPLOMBE)/ 305
2. That the defendant 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 defendant from the suit land.
3. Costs of the suit to the plaintiff.

Dated and delivered at Eldoret on this 10th day of October, 2017.

M. A ODENY

JUDGE

Read in open court in the presence of:

Mr. Melly for the Plaintiff

Mr. Koech – Court Assistant

Defendant- Absent.