



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 495 OF 2013

KANDIE CHEPTOO.....PLAINTIFF

VERSUS

PHILIP CHIRCHIR.....DEFENDANT

JUDGMENT

Kandie Cheptoo, (hereinafter referred to as the plaintiff) has sued **Philip Chirchir (hereinafter referred to as the defendant)**, claiming that he is the owner of all that parcel of land known as **Kiplombe/Kiplombe Block 10 (Growel)/4**. That the plaintiff granted the defendant permission to reside on the said parcel of land, and now the defendant has laid claims that he bought the said parcel of land from the plaintiff and even attempted to sell the land to other people. The plaintiff avers that the defendant's allegations are untrue and outrageous and amounts to abuse of the licence granted by the plaintiff to the defendant and on 18th September, 2013, the said licence was withdrawn by the plaintiff.

That in the premises, the plaintiff's claim against the defendant is for a declaration that the defendant is a trespasser on parcel Kiplombe/Kiplombe Block 10 (Growel)/4. The plaintiff further claims against the defendant for an order of eviction of the defendant, its agents, servants or anybody claiming through him from parcel Kiplombe/Kiplombe Block 10 (Growel)/4. The plaintiff's further claim against the defendant is for an order of permanent injunction barring the defendant, his agents, servants or anybody claiming through them from interfering or dealing with the said parcel or any portion thereof and costs of this suit

Plaintiff gave evidence that he is the registered owner of parcel Number Kiplombe/Kiplombe Block 10 (Growel)/4. He granted the defendant permission to reside on the parcel of land. However, the defendant has recently started an attempt to sell the land and when he questioned him about it, the defendant claimed to have bought the land from the plaintiff which claims are untrue and outrageous. He gave him notice to vacate and remove his structures but he has blatantly refused to do so. The plaintiff therefore prays that the defendant be declared a trespasser on parcel Number Kiplombe/Kiplombe Block 10 (Growel)/4 and be evicted there from. He further prays that a permanent injunction be issued against him and he be awarded costs of this suit. The plaintiff produced a letter requiring the defendant to vacate. He also produced a title deed indicating that the property is in the name of the plaintiff.

I have considered the Plaintiff, evidence on record and do find that the Plaintiff is the registered proprietor of the suit land. He produced the title deed for the said parcel of land. **Section 24 (a) of Land Registration (Act No.3 of 2012)** provides that:-

“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 privileges belonging or appurtenant thereto.”

The registration of the plaintiff as proprietors of the suit land, gives the plaintiff absolute proprietorship

for the said parcel of land. Such absolute proprietorship can only be subject to certain rights and privileges as are known to law. That is why Section 25 of the Act provides as follows;

S.25 (i)

“The right of a Proprietor, whether acquired on first registration or subsequently for valuable consideration or by order of court, shall not be liable to be defeated except as provided by this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, subject;

(a) to leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by Section 28 not to require noting on the register, unless the contrary is expressed in the register.

The defendant has not come forward to say what his claim on the suit land is. The plaintiff's complaint is that the defendant is occupying his land illegally. That is in violation of the plaintiff's rights and privileges over the parcel of land as envisaged in Section 24 of the Act. The plaintiff has produced the certificate of lease and the lease documentation duly registered as evidence of ownership and in terms of Section 26 (1) of the Act;

“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 and endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except –

a. On the ground of fraud or miss-representation to which the person is proved to be a party to;

b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

The plaintiff is the registered owner of the suit land and therefore has an indefeasible right over the property. The plaintiff's rights as proprietor of the land is clearly protected in law and the defendant has no reason to trespass thereon and the law allows the Defendants to challenge the plaintiffs' ownership on grounds of illegality, unprocedural acquisition or corrupt scheme. He did not do that in this suit.

I do find that the Plaintiff has proved his case on a balance of probability to be the absolute proprietor of the suit land therefore entitled to rights and privileges that appurtenant thereto. The plaintiff having proved to be absolute proprietor, is entitled to the orders sought in the plaint. The plaintiff has proved his case on a balance of probabilities.

I do grant a declaration that the defendant is a trespasser on parcel Kiplombe/Kiplombe Block 10 (Growel)/4. Further, I do grant an order of eviction of the defendant from parcel Kiplombe/Kiplombe Block 10 (Growel)/4. Lastly, I do grant a permanent injunction do issue against the defendant barring them from interfering or in any manner dealing with the said land or any portion thereof. Costs of this suit to the plaintiff. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 6TH DAY OF OCTOBER, 2017.

A. OMBWAYO

JUDGE