



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 947 OF 2012

PAUL CHERUIYOT CHEPKONGA.....PLAINTIFF

VERSUS

DAVID KIMETO KIPTABUS.....DEFENDANT

JUDGMENT

Paul Cheruiyot Chepkonga (hereinafter referred to as the plaintiff) has come to this court against **David Kimeto Kiptabus** claiming to be the sole registered absolute owner of all that parcel of land known as **MOIBEN/KIMNAI/600** measuring 1.8 hectares. That the plaintiff purchased the same in two portions on the 6th July, 1988 and 12th August, 1991 respectively from one Kiplagat Kiptabus. That the said Kiplagat Kiptabus transferred the portion to him and it was registered in his name. The plaintiff enjoyed quiet possession of his land until recently when the defendant, a nephew to Kiplagat Kiptabus moved onto the land and started encroaching on the plaintiff's portion.

The defendant without any colour of right removed the beacons and destroyed fences. Further, he put up another fence blocking off all access to the main road claiming that all the land belonged to him. The plaintiff avers that he is entitled to enjoy all rights that by law attach to a proprietor of land and the defendant's actions amount to interference with the plaintiff's rights over his parcel of land. The plaintiff gave demand notice but the defendant failed to vacate.

The plaintiff prays for judgment against the defendant for a declaration that the plaintiff is the owner of all that parcel of land known as Moiben/Kimnai/600 and an order of injunction permanently restraining the defendant, his servants and/or agents from trespassing into, or in any manner dealing with the plaintiff's parcel of land. He prays costs of this suit plus interest.

The defendant filed defence denying the plaintiff's claim. The defendant further denies that the court has jurisdiction to entertain the suit. When the matter came for hearing on 27.9.2017, the plaintiff was present whilst the defendant was absent. The defendant's counsel was also absent.

The plaintiff was sworn and stated that he resides at Kapsowar. On 6.7.1988, he had entered into a written sale agreement with Kiplagat Kiptabus, whereby he had agreed to sell to the defendant a portion of land from Elgeyo Marakwet/Kimnai/288 measuring one (1) acres. He purchased the said parcel of land at an agreed purchase price of Kshs.8000.

That again on 12.8.1991, he entered into another written supplementary sale agreement with Kiplagat Kiptabus whereby he agreed to sell to him an additional three decimal five (3.5) acres at an agreed purchase price of Kshs.45,000. After the supplementary sale agreement, the total acreage sold to him by Kiplagat Kiptabus was four decimal five (4.5) acres. That he entered the parcel of land sold to him by Kiplagat Kiptabus, they attended Land Control Board meeting in 1992 and also obtained consent from the

Land Control Board.

That thereafter mutation was done on the said parcel of land which was registered on 18.10.1993. He also went ahead did the transfer and was issued with the Title Deed for the parcel of land on 26.10.1993. The parcel of land is now known as Moiben/Kimnai/600 and he is the registered owner. That he enjoyed quiet possession on the parcel of land and also did improvements and developments thereon, until recently when the defendant moved onto his parcel of land and started encroaching on his land.

That the defendant also removed beacons on 14.12.2009 and destroyed his fence and started putting up another fence blocking off all the access road blocking to the main road and claiming that the parcel of land belongs to him.

The plaintiff prays this Honourable court to declare that he is the absolute owner of the parcel of land No. Moiben/Kimnai/600 and issue an injunction against the defendant from trespassing or entering into his parcel of land. He also wants to be paid the costs of this suit with interest.

The plaintiff produced the sale agreements, letter of consent and the title deed. The title deed for Moiben/Kimnai/600 measuring 1.8 hectares as per registry map sheet No. 27 certifies that Paul Cheruiyot Chepkonga is the registered absolute proprietor of the land comprised in the title subject to all entries in the register relating to the land and to such overriding intents as per the law. The title deed was given on 26.10.1993.

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 proprietor of the suit land, gives the plaintiffs absolute proprietorship for those parcels. 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. They 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. There is no evidence of fraud, illegality on the part of the plaintiff and therefore being the registered owner, he is entitled to the prayers sought.

I do grant a declaration that the plaintiff is the owner of all that parcel of land known as Moiben/Kimnai/600. I do grant an order of injunction permanently restraining the defendant, his servants and/or agents from trespassing into, or in any manner dealing with the plaintiff's parcel of land. Costs of this suit plus interest are given to the plaintiff. Orders accordingly.

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

A. OMBWAYO

JUDGE