



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAKAMEGA
ELC CASE NO. 23 OF 2012

RICHARD KUBONDO MAINA.....PLAINTIFF

VERSUS

NDUNG’U WAWERU.....DEFENDANT

JUDGEMENT

The plaintiff’s case is that at all material times to this suit the plaintiff is the registered owner, of the whole of parcels of land known as KAKAMEGA/KONGONI/802 and KAKAMEGA/KONGONI/624 measuring approximately 2.2 HA and 2.08 ha respectively. The plaintiff avers that he purchased the said parcels of lands through public auction on 22nd July 2011 after the defendant had defaulted in his debt obligations. The plaintiff further avers that the defendant has refused and or neglected to give vacant possession herein. The plaintiff’s claim against the defendant is for an order of eviction and demolish of any structures erected by the defendant on the plaintiff’s parcel of land better known as KAKAMEGA/KONGONI/802 and 624. The plaintiff contends that there is no previous or pending suit between the same parties herein over the same subject matter above. Demand and notice of intention to sue have been issued to no avail. The plaintiff prays for judgment against the defendant for; an order of eviction and demolish of any structures erected by the defendant on the plaintiff’s parcel of land best known as KAKAMEGA/KONGONI/802 and KAKAMEGA/KONGONI/624 and costs of this suit.

PW1 the plaintiff testified that, he purchase the two parcels of land numbers KAKAMEGA/KONGONI/624 and 802 vide a public auction on Friday 22nd July, 2011 (PEx1 A&B). He did purchase the same vide an agreement dated 22nd July, 2011 (PEx 2 A&B) and was then issued with a certificate of sale by Legacy Auctioneers Services (PEx 3 A&B). He then proceeded to obtain title deeds in respect to the two parcels of land (PEx 4 A&B). Despite having purchased the same, the defendant has failed to vacate the said parcels. It is only after the orders sought are granted that he can have a right to enjoy the use of the said parcels.

The plaintiff submitted that he bought the suit properties after an advert appeared on the local daily newspaper. The auction was concluded by legacy Auctioneering Services and certificate of sale issued. The plaintiff entered into an agreement for sale for both properties and later acquired the title deed as shown through plaintiff’s exhibits to 1 to 6. The plaintiff is the absolute registered proprietor of the suit premises KAKAMEGA/KONGONI/802 and KAKAMEGA/KONGONI/624 and is entitled to quiet possession without any interference from the defendant. Title is conclusive evidence of ownership

Section 26 (1) of the Land Registration Act states that

“The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer 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 and the title of that proprietor shall not be subject to challenge.”

The plaintiff’s evidence is that at all material times he was the lawful and registered proprietor of land parcels Nos. KAKAMEGA/KONGONI/802 and KAKAMEGA/KONGONI/624 which he acquired through public auction (PEx 4 A&B). The defendant failed to file a defence and the matter came for formal proof. The plaintiff prays for eviction and costs of the suit herein. I have carefully considered the plaintiff’s case.

The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

“Subject to this Act, 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.”

Section 26 (1) of the Land Registration Act states as follows:

“The Certificate of Title issued by the Registrar upon registration ... 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... and the title of 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, unprocedurally or through a corrupt scheme.”*

This court in considering this matter referred to the case of **Elijah Makeri Nyangw’ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR** where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. **Hon Justice Munyao Sila** in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:-

“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme”.

PW1, the plaintiff gave evidence in court that, he purchase the two parcels of land numbers KAKAMEGA/KONGONI/624 and 802 vide a public auction on Friday 22nd July, 2011 (PEx1 A&B). He did purchase the same vide an agreement dated 22nd July, 2011 (PEx2 A&B) and was then issued with a certificate of sale by Legacy Auctioneers Services (PEx3 A&B). He then proceeded to obtain title deeds in respect to the two parcels of land (PEx4 A&B) his certificate of titles have not been challenged. I therefore find the plaintiff has proved his case on a balance of probabilities and make the following orders;

1. The defendant is given three (3) months to vacate and in default an eviction order to issue forthwith to him to evict him from the land parcels Nos KAKAMEGA/KONGONI/802 and KAKAKAMEGA/KONGONI/624
2. Cost of this suit to the plaintiff.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 23RD DAY OF
NOVEMBER 2017.**

N.A. MATHEKA

JUDGE