



REPUBLIC OF KENYA.

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 247 OF 2016

ESTA CHEPTABT TIROP.....PLAINTIFF

VERSUS

ANDREW CHEPSIROR.....DEFENDANT

JUDGEMENT

By a plaint dated 31st August 2016, the plaintiff herein sued the defendant seeking for:

- a. Mesne profits as it may be determined by the court from the year 2008 to date of eviction from land parcel No. SOY/KAPSANG BLOCK 4 (ZIWA)/490.
- b. Order of eviction of the defendant's workers and/ or agents, servants or any other person acting under his instructions/authority from the suit land parcel No. SOY/KAPSANG BLOCK 4 (ZIWA)/490.
- c. Order of permanent injunction against the defendant and/ or agent/ servant or any other person claiming and /or occupying the suit land parcel No. SOY/KAPSANG BLOCK 4 (ZIWA)/490 under the defendant's authority and/ or instructions or directions.
- d. Costs of the suit
- e. Any other relief that the Honourable court may deem fit to grant.

This matter came up for hearing on 13th December 2017 when the plaintiff testified in support of her case. It was the plaintiff's evidence that she entered into a land sale agreement on 6th May 2004 with one Mr. Noah Cheruiyot Tiongik (now deceased) wherein she agreed to purchase a portion of land known as SOY/KAPSANG BLOCK 4 (ZIWA) / 490 measuring 1.81 HA. That the parties agreed on the purchase price of Kshs. 375,000/ of which the Plaintiff paid Kshs. 345,000/ on execution of the sale agreement, thereof and the remaining balance of Kshs. 30,000/ was to be paid within fourteen (14) days which was paid in full. The plaintiff produced the sale agreement as exhibit No.1

It was the Plaintiff's case that she took possession of the suit land immediately after signing the sale agreement and began cultivating the portion of the land. She further stated that subsequently after full payment of the purchase price, Mr. Noah Cheruiyot Tiongik transferred the suit land into her name after subdivision. The plaintiff also testified that she was issued with a title deed on 30/7/13 after following all due process of subdivision and transfer.

The plaintiff further stated that in the year 2008 the defendant encroached into her portion of land without

any justifiable reasons and/or cause and took occupation of the same without due regard to her interest, consent or authority. She stated that this denied her access and use of her portion of land and therefore occasioning her losses. It was further her testimony that the defendant has remained adamant despite the matter being forwarded to the Area Chief. She stated that the defendant deliberately trespassed into her portion of land therefore denying her quiet possession and enjoyment of her rightful portion of land. She urged the court to enter judgment against the defendant in her favour as prayed in the plaint.

Counsel for the plaintiff filed written submissions and gave a background of the case and reiterated the plaintiff's evidence. He submitted that the title to the suit land belongs to the plaintiff and cited sections 24(a), 25(1) and 26 of the Land Registration Act 2012, which sections are anchored on Article 64 of the Constitution of Kenya 2010. Counsel further submitted that the Defendant has no legal and / or Constitutional and / or equitable right(s) at all over the subject land.

Counsel submitted that the plaintiff had proved her case against the defendant on a balance of probability as required in law and therefore her prayers should be allowed.

Analysis and determination

The issues for determination in this case are clear. The plaintiff gave evidence that she entered into a sale agreement and paid the full purchase price and the land was transferred in her favour. She produced the sale agreement and the title deed registered in her name. It is not disputed that she is the registered owner of the suit land. The defendant was served with summons and given an opportunity to defend himself but did not enter appearance or file a defence. The plaintiff's evidence is therefore uncontroverted. There is also no evidence that the title was procured unprocedurally or through misrepresentation. If that was the case then section 26 of the Land Registration Act 2012 would apply. I find that the plaintiff has proved that she is the bona fide owner of the suit land to the exclusion of others.

The plaintiff also prayed for mesne profits. Mesne profits is a special damage which must be specifically pleaded and proved. The plaintiff just mentioned mesne profits but did not indicate the amount that the plaintiff is claiming. I find that this limb of her prayer has not been proved and is therefore denied.

The upshot is that I enter judgement for the plaintiff against the defendant and make the following orders:

- a. That an Order of permanent injunction is hereby issued against the defendant and/ or agent/ servant or any other person claiming and /or occupying the suit land parcel No. SOY/KAPSANG BLOCK 4 (ZIWA)/490 under the defendant's authority and/ or instructions or directions.
- b. The defendant to give vacant possession to the plaintiff within 30 days in default of so vacating an eviction order to issue against the defendant from land parcel No. SOY/KAPSANG BLOCK 4 (ZIWA)/490.
- c. Defendant to pay costs of the suit.

Dated and delivered at Eldoret on this 20th day of December, 2017.

M.A ODENY

JUDGE

Read in open court in the presence of:

Mr. Kiboi for the Plaintiff.

Mr. Koech – Court assistant

Defendant – absent.