



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 323 OF 2013

SOTI MASAI.....PLAINTIFF

VERSUS

PENINAH KIBET.....1ST DEFENDANT

ADEN KIPCHIRCHIR.....2ND DEFENDANT

LEDISHAH CHEROP.....3RD DEFENDANT

JUDGMENT

Soti Masai, (*hereinafter referred to as the plaintiff*) has filed this suit against Peninah Kibet, Aden Kipchirchir and Ledishah Cherop (*herein referred to as the defendants*) claiming that the 1st defendant is the daughter in law of the plaintiff, whilst the 2nd defendant is a son to the 1st defendant and that the 3rd defendant is a daughter to the 1st defendant. The plaintiff is the registered proprietor of all that parcel of land known as L. R. No. Mosop/Kapchorwa/700, Mosop/Kapchorwa/701 and Mosop/Kapchorwa/688. The plaintiff claims that on or about 15.3.2010, the defendants jointly and without any colour of right entered into and occupied the plaintiff's suit parcels of land Mosop/Kachorwa/700, Mosop/Kapchorwa/701 and Mosop/Kapchorwa/688 and built structures thereon as well as unlawfully cultivated the said parcels of land. That during the same period, the defendants jointly and without any colour of right entered into and occupied the plaintiff's suit parcels No. Mosop/Kapchorwa 682, 683, 684, 685, 686 and 687 which parcels the plaintiff had reserved for the occupation of the children of the late daughter Holga Masai as per the wish of her later husband.

The plaintiff's claim and prayers against the defendants is for order of this Honourable Court jointly and severally evicting the defendants from the aforesaid plaintiff's suit parcels of land Mosop/Kapchorwa: 700, 701, 688, 682, 683, 684, 685, 686 and 687. The plaintiff further seeks an order of this Honourable court permanently restraining the defendants jointly and severally from further entering, encroaching onto and/or in any other manner interfering with the plaintiff's use, possession and ownership of the aforesaid suit parcels of land. Though the defendants filed defence and counterclaim, they failed to attend hearing despite being served.

When the matter came for hearing, the plaintiff, *Soti Maasai*, testified that she is the *bonafide* owner of all the parcels of land known as L.R. NO. MOSOP/KAPCHORWA/700,701,688,682,683,684,685,686 and 687 and that she has been in quiet possession of the parcels of land until recently when the 1st, 2nd and 3rd defendants/respondents entered her parcel and began their illegal activities. That on or about 15th March,2010, the defendants jointly and without any right, entered into and occupied her parcel of land MOSOP/KAPCHORWA/700,701 and 688 and built structures thereon as well as unlawfully cultivated

the said parcel of land. During the same period, the defendant jointly and without any right entered into and occupied her parcels of land MOSOP/KAPCHORWA/682, 683, 684, 685, 686 and 687 which she had reserved for the occupation of the children of her late daughter, HOLGA MASAI as per the views/wishes of her late husband.

She strongly believes that the illegal activities, dealing and errands were actuated by malice, ill will on the part of the 1st, 2nd and 3rd defendants and she does blame the defendants for scheming and bringing trouble which has destabilized her proprietorship yet she is the legal owner who has been enjoying incessant ownership, peaceful possession. The 1st, 2nd and 3rd defendants/respondents are taking advantage of her old age to infringe on the rights to ownership by their actions of intrusion, displacement and/or eviction out of the parcel of land which she pleads with this Honourable Court to consider. They also met as instructed by the court to settle the problem out of court, but Aden Kipchirchir snatched Minutes, became violent and that they ran for their safety. They therefore, request the court to take over and deliver justice.

William Cheron, the plaintiffs first witness, testified that he is the first nephew of the plaintiff and a village Elder as well. He is aware of all antagonism between the plaintiff and the defendant from the year 2009 to date. The main cause is the unlawful encroachment of the parcels MOSOP/KAPCHORWA/700, 701 and 688. He is also aware that the 1st defendant and her children; that is, 2nd and 3rd defendants forcefully occupied the land parcel belonging to Soti Masai who had identified and apportioned the same to the children of the late HOLGA MASAI thus MOSOP/KAPCHORWA/782, 683, 684, 685, 686 and 687.

That as a first nephew and a village elder, he has organized dialogue from the family level; Chief's office, District Officer's office, District Commissioner's Office but all in vain. The 1st Defendant and her children resorted to using force in several occasions. For instance, they chased a surveyor away in the year 2011. The 2nd defendant went to his place of work the same year to strangle him. The District Commissioner instructed them to show the first defendant where to settle and in the process, the 2nd defendant distracted the meeting, tore the Minutes and locked him in the plaintiff's house threatening to kill him. The administration Police Officer, Mr. Chepsiror was called to intervene.

He also recalls in March 2012, when the 1st, 2nd and 3rd defendants demolished the fence of the plaintiff but later fenced it again. On 15th and 16th March, 2013, they demolished the fence and constructed a house on the plaintiff parcel of land and threatened her. They also met as instructed by the court to settle the problem out of court, but Aden Kipchirchir snatched Minutes and became violent. They ran for their safety. They therefore request the court to take over and deliver justice.

Stanley Chepsoi, the plaintiff's second witness, testified that he is the village elder of Mwochet village and he remembers when the family of Kaptalai Masai invited him to preside over a land dispute meeting and the members who were present are himself, William Cheron, Soti Masai — (**owner of the land**), Joseph Kipsuge — (**Elder**), Peninah Kibet (**daughter in law**), Naomi Kemboi — (**daughter**), Rhoda Kiptarus- (**daughter**), Aden Kipchirchir — (**son of Peninah**), Victor (**Nephew**) and Kiringi (**cousin**). The meeting started by Soti Masai explaining how she shared out her land. That she had given the wife of her late son, children of the late daughter and remained with her portion of land. The children of the deceased daughters were given the following plots measuring 1/8 each (i) Nos. 682 and 683 — Nehema Jeptoo, (ii) 684 and 685 — Victor Kipchumba, (iii) 686 and 687 — Abigeal Jerono. The deceased (Holga) was not married and had passed on in 2004 because of cancer and buried at her parents' home. The second share is to the 1st defendant who is the wife of her late son that is Plot Nos. 689, 690, 691, 692, 693, 694, 695 each measuring 1/8 an acre and 702 measuring 1/2 an acre and 703 measuring 3 acres. That she remained with plots Nos. 700 and 701 measuring 1/2 an acre each plus 688 measuring 1/2 an acre. She had given the church 4 plots measuring 1/8 an acre in each exchange of 5 acres which she owns.

After explaining, Aden Kipchirchir wanted to know why the land should be shared, he became violent and wanted to snatch the Minutes papers but the witness resisted. Fearing for their safety, they ran away. As a village elder, he supports how the plaintiff shared her land since it is genuine. Also, he heard earlier

that 1st defendant was spreading rumours that the daughters had taken all the land and incited everybody. Each should move to their shares given for the peace and harmony to prevail. The land belongs to the plaintiff hence she has the powers to do what she thinks it is right but it seems they have overlooked her and the defendant wants to use force. They request the court of law to act for justice to prevail.

I have considered the pleadings, evidence on record and submissions and do find that the plaintiff is the registered proprietor of land registration number Mosop/Kapchorwa 688, 700 and 701. The defendants have entered the suit properties illegally and built structures thereon and have cultivated the lands. **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 defendants have not come forward to say what their claim on the suit land is. The plaintiff's complaint is that the defendants are occupying her 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 titles as evidence of ownership and in terms of Section 26 (1) of the Act thus: -

“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 defendants have 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.

The plaintiff has proved on balance of probabilities that she is the registered proprietor of the suit

properties **Mosop/Kapchorwa/700, 701, 688, 682, 683, 684, 685, 686 and 687** and therefore, is entitled to all rights and privileges appurtenant thereto and therefore, is entitled to the orders sought. I do grant an order of eviction to remove the defendants, their servants and/or agents from the plaintiff's suit parcels of land Mosop/Kapchorwa/700, 701, 688, 682, 683, 684, 685, 686 and 687 and a permanent injunction restraining the defendants from further entering, encroaching and/or in any other manner interfering with the plaintiff's use, possession and ownership of all those parcels of land Mosop/Kapchorwa/700, 701, 688, 682, 683, 684, 685, 686 and 687. No order as to costs as it is a family dispute. The plaintiff to give two months' notice to the defendants and officer commanding police division before effecting any eviction. Orders accordingly.

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

A. OMBWAYO

JUDGE