

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 147 OF 2016

THOMAS OMBATI AKAMA.....PLAINTIFF

VERSUS

BENITA SIGEI..... DEFENDANT

JUDGMENT

Thomas Ombati Akama has come to court against *Benita Sigei* claiming that he is the registered owner of all that parcel of land known as ***Eldoret Municipality/Block 21 (King'ong'o)/425*** as he bought the said parcel of land from Ruth Jepkoech Chirchir and Esther Jepchirchir Maiyo and has since been the owner of the said parcel. That the defendant who has since trespassed to his land is a stranger to the plaintiff since he bought the said parcel 11 years ago. That he has since been paying land rates in respect of parcel Eldoret Municipality/Block 21 (King'ong'o)/425 to the County Government of Uasin Gishu. That he has had peaceful and quiet enjoyment of the parcel of land until the year 2016 when the defendant trespassed and damaged the fence of the said parcel claiming that she owns the land. That he developed the said plot and since then, he has been collecting rent from the tenants. That the defendant has continued in her efforts to claim the said parcel of land and that the defendant's action amount to an act of trespass and ought to be restrained from claiming and or using the said land.

That despite demand having been made and notice of suing, the defendant has persisted in staking a claim over the said parcel of land thus rendering the present action necessary.

The plaintiff prays for an order of permanent injunction issued against the respondent, her agents and/or servants barring them from trespassing on the plaintiff's piece or parcel of land known as Eldoret Municipality/Block 21 (King'ong'o)/425. An order of eviction issued against the defendant, her agents and/or servants from the parcel of land known as Eldoret Municipality Block 21 (King'ong'o)/425 and costs of this action.

When the matter came for hearing the plaintiff stated under oath that he lives and carries on business in Kisii County and that he bought land from Ruth Jepkoech Chirchir and Esther Jepchirchir Maiyo on 19th July, 2005 and took full possession of the said property to date with the development in it. That he improved the developments on the said property which comprised of rental houses which is currently occupied by tenants and since he has been collecting rent from them. That he has also been paying land rates to the County Government of Uasin Gishu in respect of the said property.

The defendant suddenly began claiming that she owns the parcel of land and has begun putting up structures. That he has reported the matter at the office of the Assistant Chief, Kapsaos sub-location, Kapyemit location and also at Baharini Police Station under OB No. 21/28/05/2016. He states that he is registered owner of the said parcel of land as he has title deed and he prays for an order of permanent injunction and eviction against the defendant, her servants and/or agents barring them from trespassing into his 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 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.

I have considered the pleadings and evidence on record and do find that the plaintiff has proved on a balance of probabilities that he is the registered owner of the suit land and therefore, he is entitled to the orders sought. I do hereby grant an order of permanent injunction against the defendant, her agents and/or servants barring them from trespassing on the plaintiff’s piece or parcel of land known as Eldoret Municipality/Block 21 (King’ong’o)/425. Further, I do issue an order of eviction against the defendant, her agents and/or servants from piece or parcel of land known as Eldoret Municipality Block 21 (King’ong’o)/425. I do grant costs to the plaintiff.

Dated and delivered at Eldoret this 19th day of December, 2017.

A. OMBWAYO

JUDGE