



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC CASE NO.62 OF 2014

DANIEL MOROKO BARITO.....PLAINTIFF

VERSUS

ANTHONY NGE'ERECHI.....1ST DEFENDANT

JANE MARITIM ALIAS BARITO.....2ND DEFENDANT

JUDGMENT

Introduction

1. By a Plaint dated 11th October 2014 the Plaintiff filed suit against the Defendant seeking a permanent injunction to restrain the Defendants from re-entering land parcel number KERICHO/CHEBUNYO/466.
2. Despite being served with Summons to Enter Appearance, the Defendants did not enter appearance or file a Defence. The case therefore proceeded ex-parte.

Plaintiff's Case

3. When the case came up for hearing the Plaintiff testified and called 2 witnesses. The Plaintiff's un-controverted evidence is that he is the registered proprietor of land parcel number KERICHO/CHEBUNYO/ 466 measuring 1.4 Hectares. He produced the title deed in respect of the said parcel of land as proof of his claim. He testified that the 1st Defendant who is his step brother and the 2nd Defendant who is his step-mother have been demanding a share of the suit property under the mistaken belief that it is family land.
4. He testified that he purchased the said parcel of land using his own money and his late father did not contribute any money towards its purchase. He stated that when he bought the said parcel of land his father had gone to work in one of the colonial settlements in Rongai and when he came back, he stayed briefly with the Plaintiff on the suit land before he moved to his own parcel of land in Transmara.
5. The plaintiff's father stayed with the defendants in Transmara upto the time of death. He prayed for a permanent injunction to restrain the defendants from interfering with his land.
6. The Plaintiff called 2 witnesses, Kipketer Arap Kirui and William Kiptanui Arap Mitey who are both his neighbours. They testified that the Plaintiff had been their neighbour since the early sixties and that he had been registered as the proprietor of the suit land during the adjudication process. They stated that even though the Plaintiff had stayed with his father on the suit land for a short time, the father later moved to his own land in Transmara and he had never come back to claim the plaintiff's land. They testified that they were aware of the defendants' claims but maintained that the land solely belonged to the plaintiff and the defendants had no right to lay claim to it.

Analysis and Determination

7. The main issues for determination are as follows:

- i. Whether the Plaintiff is the registered proprietor of land parcel number KERICHO/CHEBUNYO/466
- ii. Whether the Defendants have any right to the Plaintiff's land
- iii. whether the Plaintiff is entitled to the reliefs sought.

8. A party seeking to prevent alienation, wastage or damage to property in dispute must first establish that he has legal right which he seeks

to protect by the injunction sought. The plaintiff's testimony was not challenged as the Defendant failed to enter appearance or file a Defence. The plaintiff produced a title deed showing that he is the registered proprietor of land parcel number KERICHO/CHEBUNYO/466.

9. Section 24 of the Land Registration Act provides as follows:

a) 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.

10. Section 26 of the same Act provides that 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 indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except:

a) on grounds of fraud, or misrepresentation to which 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.

11. It is therefore my finding that the plaintiff is the sole proprietor of land parcel number KERICHO/CHEBUNYO/466.

12. Regarding the second issue, the plaintiff and his witnesses categorically stated that the defendants have no right to claim the suit land as it is not family land. Their continued demands for a share of the suit land are misplaced and unless they are restrained they may trespass onto the said land.

13. The third issue relates to the reliefs sought by the plaintiff. The plaintiff seeks a permanent injunction to restrain the defendant, her agents, servants, employees or anyone acting on his behalf from interfering with the suit land. Having established that the defendants have no right to the suit land the plaintiff is entitled to the remedy sought.

14. With regard to the prayer for injunction, the principles that apply to the grant of a permanent injunction are well settled. Once the plaintiff has established a right, infringement of that right will be restrained unless an award of damages would be an adequate remedy. In the instant suit the plaintiff has established that he is the registered proprietor of the suit land. In the circumstances it is my finding that the plaintiff is entitled to a permanent injunction restraining the defendants from interfering with the Plaintiff's land.

Conclusion

15. In conclusion, I am satisfied that the plaintiff has proved his case on a balance of probabilities. I accordingly enter judgment for plaintiff as prayed in the Plaint and direct as follows:

i. A permanent injunction is hereby issued restraining the defendants by themselves, their employees, agents, servants and or any persons acting on their behalf from entering, trespassing, cultivating and or in any way whatsoever interfering with land parcel number KERICHO/CHEBUNYO/466

ii. The defendants shall bear the costs of this suit.

Dated, signed and delivered at Kericho this 15th day of December 2017

J.M ONYANGO

JUDGE

In the presence of:

Ms. Ngetich for J.K Koech for the Plaintiff

No appearance for the Defendant

Court Assistant: Rotich