



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERICHO

ELC CASE NO.13 OF 2016

MARY CHELANGAT CHUMO.....PLAINTIFF

VERSUS

ELIZABETH CHEPKORIR NGENO.....DEFENDANT

JUDGMENT

Introduction

On 14th March 2016 the Plaintiff filed suit against the Defendant seeking an order of eviction and an injunction to restrain the Defendant either by herself, her agents, servants, employees or any other person acting on her behalf from trespassing onto, erecting structures, interfering with or doing any other act which is prejudicial to the plaintiff's proprietary interest in land parcel number KERICHO/LITEIN/1816. Simultaneously with the Plaintiff filed an application for injunction and the same was granted pending the hearing and determination of the main suit.

Despite being served with Summons to Enter Appearance, together with the application for injunction, the Defendant did not enter appearance or file a Defence. She also failed to respond to the application. The case therefore proceeded ex-parte.

Plaintiff's Case

When the case came up for hearing the Plaintiff testified and called 2 witnesses. The Plaintiff's uncontroverted evidence is that she is the registered owner of land parcel number KERICHO/LITEIN/1816 measuring 14 acres and she has been living on the said land with her children for more than 41 years. She produced the title deed in respect of the said parcel of land as proof of her claim. She testified that the Defendant had trespassed onto her land, erected a house thereon and started cultivating a portion of the said land. She produced photos showing the portion on which the Defendant has encroached which measures approximately 8 acres. She testified that she had reported the matter to the chief in 2016 whereupon the Defendant was summoned and told to stop interfering with the Plaintiff's land but she did not heed the chief's order thus prompting the plaintiff to file this suit.

PW2 Joseph Kiplangat who is the Chairman of the plaintiff's clan testified that the plaintiff was married to the Defendant's mother, Tabutany through a levirate union. He testified that before her death, the said Tabutany had stated the only married daughter who should inherit her land is Alice Koske. The Defendant was therefore not entitled to inherit her late mother's land.

PW3 Kipngeno Arap Sitienei who is the Plaintiff's paternal uncle confirmed that the Plaintiff was married to the defendant's mother. He corroborated PW1's testimony that the defendant had no right to interfere with the plaintiff's land as she was married and had her own parcel of land.

Analysis and Determination

The main issues for determination are as follows:

- i. Whether the Plaintiff is the registered proprietor of land parcel number KERICHO/LITEIN1816**
- ii. Whether the Defendant has trespassed onto the Plaintiff's land**
- iii. whether the Plaintiff is entitled to the reliefs 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 she is the registered proprietor of land parcel number KERICHO/LITEIN/1816. 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.

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.

It is therefore my finding that the plaintiff is the sole proprietor of land parcel number KERICHO/LITEIN/1816/.

Regarding the second issue, the plaintiff was expected to prove the tort of trespass against the defendants. According to Clerk and Lindsell on Torts, 18th Edition P. 923, trespass to land is defined as any unjustifiable intrusion by one person upon the land in possession of another. The onus was on the plaintiff to prove she is entitled to the suit land and that the defendants have invaded and occupied it without any justifiable cause.

It is the plaintiff's uncontroverted evidence that the defendant wrongfully entered into the suit land, constructed some structures and has remained thereon without the plaintiff's permission. The Defendant is in clear violation of the law as she has not demonstrated what rights she has over the plaintiff's land. I therefore find that she is a trespasser.

The third issue relates to the reliefs sought by the plaintiff. The plaintiff seeks an order of eviction against the defendant as well as a permanent injunction to restrain the defendant, her agents, servants, employees or anyone acting on her behalf from interfering with the suit land. Having established that the defendant is a trespasser, the plaintiff is entitled to have her evicted from the suit land.

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 she is the registered proprietor of the suit land. In the circumstances it is my finding that the plaintiff is entitled to an injunction restraining the defendant from interfering with the Plaintiff's land.

Conclusion

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

1. That the defendant do vacate the suit land within three months from the date hereof failing which the plaintiff shall be at liberty to formally apply for an eviction order.

2. A permanent injunction is hereby issued restraining the defendant by herself, her employees, agents, servants and or any persons acting under her from entering, trespassing, cultivating and or in any way whatsoever interfering with land parcel number KERICHO/LITEIN/1816

3. The costs of this suit shall be borne by the defendant.

Dated, signed and delivered at Kericho this 14th day of December 2017

J.M ONYANGO

JUDGE

In the presence of:

Mr Bii for the Plaintiff

No appearance for the Defendant

Court Assistant: Rotich