



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L CAUSE NO. 362 OF 2016

ROSAH JEPKOECH.....PLAINTIFF

VERSUS

KENNEDY ILAVUNA KAMUSHA.....1ST DEFENDANT

AGGREY SAKWA.....2ND DEFENDANT

JUDGEMENT

By a plaint dated 2nd December 2016 the plaintiff herein sued the defendants for the following orders:

- a) A declaration that the defendants are trespassers and have no interest on parcel No. **NANDI/KEMELOI/1154** and should be evicted.
- b) A permanent injunction to restrain the defendants their agents/servants from trespassing or in any way dealing with the plaintiff's parcel of land known as **NANDI/KEMELOI/1154**.
- c) Costs of this suit.

The defendants were served with summons to enter appearance together with a copy of the plaint and a verifying affidavit on 22nd December 2016 but neither entered appearance nor filed a defense in this case. The plaintiff filed an affidavit of service sworn on 29th December 2016 by the process server.

The plaintiff later requested for judgement on 24th January 2017 but the Deputy Registrar ordered that she sets down the suit for formal proof with service to the defendants.

It was the plaintiff's case that she is the registered owner of parcel No. **NANDI/KEMELOI/1154** measuring 0.08 Ha or thereabout. She stated that she has sued the defendants who have illegally occupied her suit land. The plaintiff further testified that the suit land previously belonged to her father who gave it to her. She also testified that she is not related to the defendants in any way.

The plaintiff produced a copy of the title of the suit land registered in her name as exhibit No. 1 and a consent to transfer as exhibit no 2. She also testified that the defendants entered her suit land in 2009 necessitating the filing of this suit to evict them. It was the plaintiff's evidence that she served the defendants with summons to enter appearance but they neither filed a memorandum of appearance nor a defense. She also served them with a hearing notice but they did not attend. She prayed for judgement as per the plaint and the costs of this suit.

Analysis and determination

The issue to be determined by this court is as to whether the plaintiff has proved her case against the defendants on a balance of probabilities. The plaintiff gave evidence and produced a title to the suit land which is registered in her name and a consent to transfer. The plaintiff's evidence was uncontroverted by any other evidence. This does not mean that if the evidence is unchallenged the plaintiff gets a walk over. The plaintiff is under a duty to prove his or her case on a balance of probabilities. If this is lacking, the same can still be dismissed.

The fact that the suit land is registered in the plaintiff's name is prima facie evidence that she has proprietary rights in the suit land. The law is clear on indefeasibility of title upon registration as per section 24, 25, and 26 of the Land Registration Act 2012.

Section 25 specifically provides that

"The rights of a proprietor whether acquired on first registration or subsequently for valuable consideration or by an Order of court shall not be liable to be defeated except as provided in this Act, and shall be held the proprietor together with all other interests and claims whatsoever"

Section 26 of the Land Registration Act 2012 further provides: -

"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 conditions contained as endorsed in tile certificate and the title for that proprietor shall not be subject to challenge except:-

*a) On the ground of fraud or misrepresentation to which the person is proved to be a party;
or*

b) Where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme."

There was no evidence to question the authenticity of the plaintiff's title, or whether the same was acquired fraudulently or through misrepresentation. If such was the case then the indefeasibility of title can be questioned under section 26 of the Land Registration Act.

Having said that I find that the plaintiff has proved that she is the absolute owner of parcel No. **NANDI/KEMELOI/1154** to the exclusion of others. It therefore follows that the defendants are trespassers and have no proprietary interest on the suit land. I hereby enter judgement for the plaintiff against the defendants as prayed in the plaint and make the following orders:

a) That the defendants do give the plaintiff vacate possession of the suit land within 30 days upon service of this judgment or decree, in default of so vacating, an order of eviction be issued against the defendants from parcel of land No.**NANDI/KEMELOI/1154** .

b) A permanent injunction is hereby issued restraining the defendants their agents/servants from trespassing or in any way dealing with the plaintiff's parcel of land known as **NANDI/KEMELOI/1154**.

c) The defendants to pay the costs of this suit.

Dated and delivered at Eldoret on this 14th day of December, 2017.

M.A ODENY

JUDGE

Read in open court in the presence of the Plaintiff and in the absence of the Defendants.

Mr. Koech – Court Assistant.