

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 370 OF 2014

DUNCAN CHERUIYOT KOECH.....PLAINTIFF

VERSUS

SOFIA L. SHIJENGA.....DEFENDANT

JUDGMENT

Duncan Cheruiyot Koech (*hereinafter referred to as plaintiff*) has come to court against Sofia L. Shijenga (*hereinafter referred to as the defendant*) claiming that at all material times to this suit, the defendant was one of the beneficial owners of land parcel NANDI/KAMOBO/1831 following the demise of one Serah Ayuma the initial registered owner of the entire parcel. That on or about 11th day of January, 2014 vide a sale agreement dated 11th January, 2013, the defendant and her other siblings through their two siblings offered the entire land parcel Nandi/Kamobo/1831 measuring approximately 0.10 hectares at a consideration of Kshs.1,800,000/= to the plaintiff and the plaintiff accepted purchase of entire parcel of land at the consideration of Kshs.1,800,000/=.That the plaintiff is now the absolute registered proprietor of the parcel. That despite the plaintiff having fully settled the consideration monies, transfer effected and title deed issued in favour of the plaintiff, the defendant has adamantly and negligently refused to give vacant possession of the suit land.

The plaintiff avers that the defendant's conduct is unlawful and an infringement on the plaintiff's property right over the suit premises. The plaintiff's claim against the defendant is for a declaration that the defendant's occupation of sections of the suit land is unlawful and for an order of eviction of the defendant and any person whosoever is claiming through or under the defendant.

The defendant was served with summons to enter appearance, however, she failed to enter appearance or file defence and on request judgment, the Deputy Registrar ordered that the matter be listed down for hearing.

The plaintiff testified that he is an athlete and that bought the suit land and was registered as the proprietor after buying the property from the defendants representatives who had done succession through the Kadhi's Court. On the 11.01.2013, the family of the late Serah Ayuma including the defendant authorized Kennedy Khaduli and Mariam Kadogo Kiviasi to transact and transfer parcel No. Nandi/Kamobo/1831, for a consideration of Kshs.1,800,000/=. Kshs.1,100,000/= was to be paid as down payment whilst Kshs.700,000/= was to be paid within 30 days. On the said date, the plaintiff entered into an agreement with Kennedy Khaduli and Mariam Kadogo Kiviasi for the sale of the suit land to the plaintiff and made a down payment of Kshs.1,100,000/=. The balance of Kshs.700,000/= was to be paid on 11.3.2013. The plaintiff produced a title deed as proof that he is now registered as absolute proprietor of the land comprised in title No. Nandi/Kamobo/1831 measuring 0.10 Ha shown in registry map sheet 2 subject to the entries in the register relating to the land and the such of the overriding interests set out in section 28 of the Land Registration Act (No. 3 of 2012) as may for the time being subsist and affect the land. The title deed was given at the Nandi District Land Registry on 26.8.2013. The plaintiff produced a certificate of official search signed by the Land Registrar indicating that the land was registered in his name.

I do find that the plaintiff's evidence is not controverted that he is the registered proprietor of the suit parcel. **Section 24 of the Land Registration Act 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; **and** that the registration of a person as the proprietor of a

lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease. **Section 25 of the said Act** 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 the Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and 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 and that nothing in the section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee. **Section 26** 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 and 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—on the ground of fraud or misrepresentation to which the person is proved to be a party where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

The evidence on record shows that the suit parcel of land is registered in the names of the plaintiff and therefore the plaintiff is entitled to the protection under sections 24, 25 and 26 of the Land Registration Act 2012.

I have considered the plaintiff evidence on record and do find that the plaintiff has proved his case on a balance of probabilities and therefore, he is entitled to the prayers sought. I do hereby grant a declaration that the defendant is unlawfully on the suit premises and order for eviction of the defendant and any person claiming through or under the defendant from the suit land upon being given one months notice. Costs of the suit to the plaintiff.

DATED AND DELIVERED AT ELDORET THIS 29TH DAY OF JULY, 2016.

ANTONY OMBWAYO

JUDGE