



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 1021 OF 2012

CHARLES KIMURGOR CHEPKWONY.....PLAINTIFF

VERSUS

JOSEPH KIPYEGO KEBENEI.....1ST DEFENDANT

VINCENT KIPRUTO KIPKONGA.....2ND DEFENDANT

MICHAEL OMAMBIA OISANGA.....3RD DEFENDANT

LEWA JEMELI.....4TH DEFENDANT

JUDGMENT

Charles Kimurgor Chepkwony, hereinafter referred to as the plaintiff has instituted this suit against *Joseph Kipyego Kebenei*, *Vincent Kipruto Kipkonga*, *Michael Omambia Oisanga* and *Lewa Jemeli*, hereinafter referred to as defendants claiming that the plaintiff is the registered proprietor of all that property known as Title No. Uasin Gishu/Kuinet “B” Scheme/130 having purchased the whole of the same from the previous owner/plaintiff, Charles Kimurgor Chepkwony. That on 22.9.2011, the plaintiff entered into sale agreement of a portion measuring 0.5 of an acre of the said property with the 1st defendant. That it was a term of the sale agreement that the 1st defendant would pay the balance of Kshs.20,000/= on or before 24.10.2011 which the 1st defendant have failed to pay. The plaintiff further avers that as a result whereof, the plaintiff rescinded the said agreement on 18.9.2012. That on 22.2.2013, the said Joseph K. Kebenei recorded a consent whereof he conceded to claim herein.

The plaintiff avers that 2nd, 3rd and 4th defendants herein have without any right threatened to trespass upon the plaintiff's said property, damaging the perimeter fence and has threatened to erect structures thereon and have thereupon refused, ignored and or neglected the plaintiff's demand to leave.

The plaintiff further blame the 2nd, 3rd defendants and 4th defendant is for unlawfully lodging a caution against his property without any colour of right. The plaintiff's claim is for an injunction restraining the defendants, their servants, workmen and agents, from entering on the plaintiff's said property, or from erecting or causing to be erected any structures, or from in any way interfering with the plaintiff's use and enjoyment of the said property. The defendants still persist in the said trespass and intend to repeat the acts hereinbefore complained of. That despite demands made and intention to sue intimated, the defendants have failed, neglected and/or refused to cease interfering with the plaintiff's said property. That there is no other suit pending in this court or at all, and there have been no previous proceedings in any court on the same subject matter and involving the same parties herein.

Reasons wherefore, the plaintiff prays for an injunction restraining the defendants, their servants, workmen and agents, from entering on and/or from erecting or causing to be erected thereon any

structures, or from in any way interfering with the plaintiff's use and enjoyment of the plaintiff's said property. An eviction order against the defendants jointly and severally, its servants and or agents. Mesne profits and damages against the defendants jointly and severally. Costs of this suit.

The defendant filed a memorandum of appearance through the firm of Tarus & Company Ltd but failed to file defence. When the matter came for hearing on 21.11.2016, it was confirmed that the firm of Tarus and Company was served. The matter proceeded for hearing when Mr. Erick Kipsaina Chelimo testified that he lives in Kitale and works as a farmer. He has sued the defendants because he bought the land from Charles Chepkwony in 2013. He paid the purchase price and the land was transferred to the plaintiff. The land is known as Kuinet P Plot No. 30. He produced the title deed. The defendants entered the land illegally in 2013.

I have considered the pleadings, the evidence on record and do find that the plaintiff has satisfied this court on a balance of probabilities that he is the legal owner of the land in dispute.

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 proprietors of the suit land, gives the plaintiff absolute proprietorship for the parcel. 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.

The defendants have not come forward to say what his claim on the suit land is. The plaintiff has produced the certificate of lease and the lease documentation duly registered as evidence of ownership and in terms of Section 26 (1) of the Act;

“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 and endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except –

a. On the ground of fraud or miss-representation to which the person is proved to be a party to;

b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

The plaintiff is the registered owner of the suit land and therefore has an indefeasible right over the property. The plaintiff's rights as proprietor of the land are clearly protected in law and the defendant has no reason to trespass thereon and the law allows the Defendants to challenge the plaintiffs' ownership on grounds of illegality, unprocedural acquisition or corrupt scheme. They did not do that in this suit.

The plaintiff being the absolute owner of the land in dispute is entitled to judgment in terms of prayer (a),

(b), (c) and (d). I do grant judgment in the following terms an injunction restraining the defendants, their servants, workmen and agents, from entering on and/or from erecting or causing to be erected thereon any structures, or from in any way interfering with the plaintiff's use and enjoyment of the plaintiff's said property. The defendants to vacate the suit premises within 30 days failure of which the plaintiff to evict them with the assistance of the O.C.S Kapsoya. Mesne profits and damages against the defendants have not been proved hence not granted. Costs of this suit are granted to the plaintiff.

DATED AND DELIVERED AT ELDORET ON 7TH DAY OF DECEMBER, 2016.

ANTONY OMBWAYO

JUDGE