



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 203 OF 2016

JACOB WAWERU KIARIE.....PLAINTIFF

VERSUS

CHARLES KIPCHUMBA BIWOTT KIPUTIA.....DEFENDANT

JUDGMENT

Jacob Waweru Kiarie hereinafter referred to as the Plaintiff, has come to court against Charles Kipchumba Biwott Kiputia claiming that he is the registered proprietor of all that parcel of land known as Ngeria/Kesses Block 5(Bayete) 31. In or about 2006, the defendant entered and or trespassed onto the plaintiff's parcel of land without the consent of the plaintiff and has remained thereon and has prevented the plaintiff from accessing and making use of his land. The defendant has his own land in Wendani area which is in the neighborhood of the larger Bayete area and it measures about 5 acres according to the defendant. For record purposes, it is important for court to note that originally there was one large parcel of land measuring 655 acres which was LR. NO. 11130/1. This was subdivided into two namely Bayete Farmer's Co-operative society Limited with 335 acres and Wendani Farmers' Co-operative Society limited with 320 acres. Bayete Farmers' Co-operative Society Limited surrendered its head title for subdivision into the individual titles now held by the members under Ngeria/Kesses Block 5 (Bayete). Wendani Farmer's Co-operative Society Limited have never surrendered their head title to date for subdivision. The defendant is therefore a trespasser on the plaintiff's parcel of land. In Eldoret C.M.C.C.C No. 241 of 2007 between Kimani Kihethu and Charles Kipchumba Biwott Kiputia, the defendant herein the defendant in his own testimony admitted that he belonged to Wendani Farmers' Co-operative society limited and not where he is presently living. The plaintiff prays for a declaration that the Plaintiff is the registered proprietor of all that parcel of land known as Ngeria/Kesses Block 5 (Bayete) 31 and that the defendant is a trespasser thereon and an order of eviction to issue against the defendant accordingly. The plaintiff has been living away from his parcel of land due to the effects of the infamous land clashes of 1992. The plaintiff has severally made demands and issued notices to the defendant to vacate his land but the defendant has refused or failed to oblige. The Plaintiff has not filed any other suit before any other court prior to this suit over the same subject matter. The cause of action arose within the jurisdiction of this Honourable court.

Reason Wherefore the plaintiff prays for judgment against the defendant for a declaration that the plaintiff is the owner of L.R.NO. Ngeria/Kesses Block 5 (Bayete) 31 and an order of eviction and Costs of the suit.

The Defendant was served but neither entered appearance nor filed defence. **PW1 Jacob Waweru Kiarie** testified that he is the registered proprietor of all that parcel of land known as Ngeria/Kesses Block 5 (Bayete) 31 measuring approximately 9 acres. He was issued with the Title Deed on 26.7.2011. Charles Kipchumba Biwott Kiputia trespassed onto his land in or about 2006. The said Kiputia has been on his land to date. They have held several meetings with the local administration to try and resolve the matter but in vain. When the Post Election Violence clashes erupted in 2008, he moved out and he has been

residing at Kondoo area but his land above named still remains at Bayete. Plot No. Ngeria/Kesses Block 5 (Bayete) 30 which borders his belongs to one Kimani Kihethu now deceased and he too had a dispute with Charles Kipchumba Biwott Kiputia and in 2007 Kimani Kihethu filed suit against him in Eldoret CMCCC No. 241 of 2007 in which Kiputia testified and told court that he was not occupying Ngeria/Kesses Block 5(Bayete) 30 in the name of Kimani Kihethu which means that he actually occupies his land Ngeria/Kesses Block 5(Bayete) 31 and that is why he has preferred this suit.

Initially, Bayete Farmers Co-operative Society Limited and Wendani Farmers' Co-operative Society Limited owned a huge parcel of land measuring 655 acres being L.R. NO. 11130/1 registered under the repealed Registration of Titles Act, Cap. 281 of the laws of Kenya. This title was later sub-divided into two namely Bayete Farmers Co-operative Society Limited taking 335 acres and Wendani Farmers' Co-operative Society Limited 320 acres respectively.

Bayete Farmers Co-operative Society Limited surrendered its head title and in place thereof individual members have since continued to obtain their titles including himself. The members of Wendani, where Kiputia is a member, have to date not subdivided their title of 320 acres. This is why Kiputia is trespassing onto his land while he has his share under Wendani Farmers' Co-operative Society Limited. He prays that he be ordered evicted out of his parcel of land so that he can be able to settle thereon.

PW2 Gabriel Njuguna Mwaura testified that he is a neighbour of PW1 who owns the disputed land. This plot number is Ngeria/Kesses/5 (Bayete) 38. He states that the defendant lives in the Plaintiff's land.

I have considered the Plaint, evidence on record of PW1 and PW2 and do find that the Plaintiff is the registered proprietor of the suit land. He produced the title deed for the said parcel of land. **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 plaintiffs as proprietors of the suit land, gives the plaintiffs absolute proprietorship for those parcels. 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 defendant has not come forward to say what his claim on the suit land is. The plaintiff's complaint is that the defendant is occupying his land illegally. That is in violation of the plaintiff's rights and privileges over the parcel of land as envisaged in Section 24 of the Act. 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 is 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.

I do find that the Plaintiff has proved his case on a balance of probability to be the absolute proprietor of the suit land therefore entitled to rights and privileges that appurtenant thereto. I do order that the defendant vacates the suit premises within 30days failure of which he be evicted by the Plaintiff with the assistance of the O.C.S Tarakwa police station. Costs of the suit to the Plaintiff.

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

ANTONY OMBWAYO

JUDGE