



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 2 “A” OF 2014**

**RIVA PETROLEUM DEALERS LTD.....PLAINTIFF**

**VERSUS**

**ELIJAH KIPRUTO KIMOSOP.....DEFENDANT**

**JUDGMENT**

***(Suit over property; no defence filed by defendant; plaintiff's suit uncontested; judgment entered for the plaintiff).***

This suit was commenced by way of a plaint filed on 10 January 2014. Despite being served, the defendant did not enter appearance nor file any defence in this matter. He also did not appear during the hearing of the suit although he was duly served with a hearing notice.

The case of the plaintiff is that it purchased the land parcel Nakuru Municipality/ Block 21/801 and 802 from one Peter Gitau, the previous owner, on 8 August of 2013. The transfer was effected, and the plaintiff became registered as proprietor, and was duly issued with title deeds. The parcels of land are used as a petrol station, and there are some shops as well, which are let out to tenants. The plaintiff has pleaded that despite being the owner, the defendant has unlawfully been demanding rent from these tenants. The plaintiff has asked for a permanent injunction to restrain the defendant from interfering with the suit premises; a declaration that the defendant has no interest over the suit properties; general damages for trespass; refund of the monies unlawfully received by the defendant from 1st September 2013; and costs of the case.

The plaintiff called one witness, who testified that the defendant collected rent for about two months but has now ceased demanding rent from the tenants in the premises. He asked for the prayers sought in the plaint.

I have considered the matter. The plaintiff's pleadings and evidence are uncontroverted. I have seen the title deeds held by the plaintiff which show that the plaintiff is the registered proprietor of the two suit properties. By dint of being owner, the plaintiff is vested with all proprietary rights including the right of exclusive possession. Its rights are set out in Section 25 of the Land Registration Act, Act No.3 of 2012 which provides as follows :-

***S. 25. (1) 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 by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—*

*(a) to the 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.*

*(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.*

There is no defence and no counterclaim filed by the defendant to demonstrate that he has any rights over the suit land. I have no reason not to declare the plaintiff owner of the suit properties as against the defendant. Neither do I have any reason not to issue a permanent injunction to restrain the defendant from the suit properties. Although the plaintiff claimed a refund of what the defendant collected as rent, it was not pleaded how much this amount is, and neither was any evidence led as to what amount was collected by the defendant. I cannot therefore allow the order for refund, for want of pleadings and evidence. There is however a claim for general damages for trespass. I do not know for how long the trespass continued and how it affected the plaintiff's operation. I will therefore only give a token sum of Kshs. 5, 000/= in appreciation that the plaintiff's rights to exclusive possession were violated. I also give costs of the suit to the plaintiff.

I therefore make the following final orders.

(a) As against the defendant, I declare the plaintiff to be the lawful owner of the land parcels Nakuru Municipality/ Block 21/801 and 802.

(b) A permanent injunction is hereby issued restraining the defendant from the land parcels Nakuru Municipality/Block 21/801 and 802.

(c) I award a token Kshs. 5,000/= as general damages for trespass.

(d) I make no award for refund of money allegedly collected by the defendant.

(e) The plaintiff shall have costs of the suit.

It is so ordered.

**Dated signed and delivered in open court at Nakuru this 12th Day of February 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**In presence of:-**

Mr Kamonjo Kibiri for plaintiff

N/A for defendant

Emmanuel Juma: Court Assistant

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**