



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT

AT KERICHO

CIVIL SUIT NO.2 OF 2014

TEGAT TEA FACTORY CO.LIMITED.....PLAINTIFF

VERSUS

JOSHUA CHERUIYOT SIGEI.....DEFENDANT

J U D G M E N T

(Suit by plaintiff for eviction of defendant from suit land; plaintiff being registered proprietor; no defence filed by defendant; plaintiff's case uncontroverted; judgment entered for the plaintiff)

This suit was commenced by way of plaint filed on 3rd March, 2014. Despite being served with summons, the defendant did not enter any appearance nor file any defence. The defendant was also served with the hearing notice but did not attend at the hearing of the suit. The plaintiff proceeded to tender its evidence through two witnesses who testified on 23rd March, 2015. The case and evidence of the plaintiff is therefore not controverted.

Briefly, the plaintiff, through an agreement dated 16th July 2012, purchased from one Kiprono arap Chumo, the land parcel Molo South/Ikumbi Block 11/9 (Tachasis) which land measures 28.48 Hectares, for a consideration of Kshs. 22,377,660/=. The purchase price was paid and the land transferred to the plaintiff. When the land was purchased, the seller had on site some farm workers and farm animals which he relocated elsewhere. When the plaintiff went to take possession of the land, they found the defendant occupying a portion of the suit land. PW-2 testified that the defendant is a stranger to them, and they did not see him when they were shown the land by the seller. Neither was he among the workers of the seller. However, the statement of PW-1 seems to suggest that the defendant may have been on the land before, but refused to relocate after the purchase of the land by the plaintiffs. Be as it may, the defendant has not filed any pleadings nor tendered any evidence to demonstrate that he is entitled to remain on the suit land. What the plaintiff wants in this suit is for the defendant to be evicted from the suit property. It is the position of the plaintiff that the defendant is a trespasser who has no interest whatsoever over the suit land.

I have seen that the plaintiff is the current registered proprietor of the suit land. As registered proprietor, 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.

As I stated earlier, there is no defence and no counterclaim filed by the defendant to demonstrate that he has any rights over the suit land.

In the circumstances, I have no doubt that the plaintiff is entitled to the prayers sought in the plaint. I now make the following final orders :-

1. It is hereby declared that the plaintiff is the proprietor of the land parcel Molo South/Ikumbi Block 11/9 (Tachasis) and that the defendant is a trespasser therein.
2. I order the defendant to vacate the land parcel Molo South/Ikumbi Block 11/9 (Tachasis) within 7 days of service of this judgment and/or decree and in default, the plaintiff is at liberty to apply formally for an order of eviction which eviction will be done at the defendant's cost.
3. I issue an order of permanent injunction restraining the defendant and/or his servants/agents/assigns from being in continued occupation of the land parcel Molo South/Ikumbi Block 11/9 (Tachasis).
4. The plaintiff shall have the costs of this suit.

It is hereby ordered and decreed.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 27TH DAY OF MARCH, 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

In the presence of

Mr. Charles Koech holding brief for Mr. Mutai for Plaintiff

Court assistant- Ruth