



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L NO. 608 OF 2012

Formerly HCC 46/2010

ALICE JEPKOECH YANO

JOSEPH KIPCHUMBA YANO

JOYCE CHEPKOECH SIROR.....PLAINTIFFS

VS

SAMSON KIPROP1ST DEFENDANT

WILSON KIPNGETICH.....2ND DEFENDANT

BENJAMIN LANGAT.....3RD DEFENDANT

HILARY KIPKEMBOI RONO.....4TH DEFENDANT

PHILIP KIPROTICH SEREM.....5TH DEFENDANT

GEORGE LELEI KIPKEMBOI.....6TH DEFENDANT

WILSON KIPLAGAT.....7TH DEFENDANT

JUDGEMENT

(Suit for eviction and permanent injunction over land; plaintiff registered proprietor; no lawful reason for the defendants to be on plaintiff's land; evidence of encroachment against the plaintiff's land; judgment entered for plaintiff against the defendant).

A. INTRODUCTION AND PLEADINGS

This suit was commenced by way of plaint filed on 24/3/2010 wherein Alice Jepkoech Yano, Joseph Kipchumba Yano(**hereinafter referred to as the Plaintiffs**) claim that they are the registered proprietors of whole of that parcel of land known as Eldoret/Municipality/Block 15/2051 (**hereinafter referred to as the suit land**). The plaintiffs claim to have been enjoying peaceful possession of the land since 1991 and that such possession still subsists up to date. The plaintiffs' complaint is that In January 2010, Samson Kiprop, Wilson Kipngetich, Benjamin Langat, Hilary Kipkemboi Rono, Philip Kiprotich Serem, George Lelei Kipkemboi, Wilson Kiplagat (**hereinafter referred to as the defendants**) by themselves, servants or agents claimed the land and occasionally trespassed into it, which is and was done without the plaintiffs' consent or authority and are also further threatening to construct upon the suit

land. Though the defendants were served with summons to enter appearance and file defence, they never filed defence hence judgment in default was entered on 13/8/2014 by the Deputy Registrar on request by the plaintiffs.

B. EVIDENCE OF THE PARTIES

The 1st plaintiff testified on behalf of the others and produced a certificate of lease for 99 years issued on 01/04/1992 to the said **1st plaintiff, ID Nos.9124736, Joseph Kipchumba Yano, ID Nos4735574 and Joyce Chepkoech ID Nos 10111619. On 07.07.2014**, She did a search on the suit land and found that the status remains the same and produced the original certificate of official search. Furthermore she produced an allotment letter issued on 13th March 1992 and evidence that the plaintiffs paid Ksh.20,000/= to commence the issuance of title and also paid Ksh.520,430/= for purposes of land rent and facilitation fee for issuance of the lease. The plaintiffs finally produced the Lease dated 9/6/2000 between the President of the Republic of Kenya on behalf of the Government of the Republic of Kenya and the plaintiffs in consideration of a sum of Kenya Shillings One Hundred And Seventy Thousand. The lease was duly executed by the Commissioner of Lands on behalf of the President and attested by the Land Registrar on the one hand and also executed by the plaintiffs on the other hand and attested by David K Suge Advocate. The lease was dully registered on 18th July 2000. Alice Jepkoech Yano testified further that she does not know the defendants and that the defendants are strangers who are putting up structures in the land.

She went to the suit land and found the defendants who were very hostile and chased her away. The plaintiffs took the initiative of reporting the matter at Yamumbi Police station and wrote a statement to that effect. The police incharge did an inquiry and called the defendants to the police station for purposes of verifying their documents of ownership but ascertained that the defendants had no documentation of ownership.

Investigations were done and police found that the property belonged to the plaintiffs and therefore told the defendants to vacate the said land after ascertaining that it belonged to the plaintiffs but the defendants declined. On the 24/03/2010, an injunction order was given by the court in favour of the plaintiffs but the defendants failed to comply. The plaintiffs pray for the declaration that the suit land belongs to the plaintiff a permanent injunction and costs of the suit.

The plaintiffs called one witness thus a police officer no 63569, Corporal Muhoyo Nyongesa from Yamumbi police station who stated that he took over the investigation from 65617 Police Constable Abdi Ibrahim, who had received reports from the first plaintiff and opened a file and did investigations .The file was produced in court with the findings of the police that the defendants have no claim on the piece of land.

C. FINDINGS AND DECISION

I have considered the pleadings, evidence and submissions of the counsel and relevant provisions of law and do find that the case of the plaintiffs is simple and their evidence is uncontroverted that they are the registered proprietors as tenants in common in equal shares of the suit land and that the defendants are occupying their land illegally and they wants them evicted .

I have considered the plaintiffs' evidence before the court and the exhibits produced and do deduce from the evidence and those exhibits that the plaintiffs are the registered proprietors of Parcel Nos. Eldoret/Municipality/Block 15/2051. The defendants did not file defence and therefore did not come forward and explain why they were trespassing onto the plaintiffs' parcel of land, or if they had any claim on the suit land. On the face of the evidence and exhibits, the plaintiffs are the registered owners of the suit property.

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 defendants have not come forward to say what their claim on the suit land is. The plaintiffs complaint is that the defendants are occupying their land illegally . That is in violation of the plaintiffs' rights and privileges over the parcel of land as envisaged in Section 24 of the Act. The plaintiffs have 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 plaintiffs are the registered owners of the suit land and therefore have an indefeasible right over those properties. The plaintiffs' rights as proprietors of the lands is clearly protected in law and the defendants have 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 am satisfied that the plaintiffs have proved their case on a balance of probabilities. Consequently, I enter judgment for the plaintiffs against the Defendants for a declaration that the plaintiffs are the lawful owners and proprietors of the land parcel ELDORET/MUNICIPALITY/BLOCK 15/2051 and an order of permanent injunction is hereby issued restraining the defendants and/or their representatives and/or assigns from entering, being upon, utilizing or in any other way dealing with the property ELDORET/MUNICIPALITY/BLOCK 15/2051. The defendants are hereby ordered to vacate the land parcel ELDORET/MUNICIPALITY/BLOCK 15/2051 within 30 days from the date hereof in default of which the plaintiff is at liberty to apply for an order of eviction. The defendants will bear the plaintiff's costs of this suit. Orders Accordingly

DATED AND DELIVERED AT ELDORET THIS 5TH OF MARCH, 2015

ANTONY OMBWAYO

JUDGE

