



**REPUBLIC OF KENYA**

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

**E & L CASE NO. 358 OF 2014**

**“FAST TRACK”**

**HASSAN KIPKEMBOI NGENY.....PLAINTIFF**

**VERSUS**

**JULIUS KIPYEGO MAIYO.....DEFENDANT**

**JUDGMENT**

Hassan Kipkemboi Ngeny, (*hereinafter referred to as the plaintiff*) has sued Julius Kipyego Maiyo (*hereinafter referred to as to defendant*) claiming that at all material times to this suit the plaintiff has been the registered absolute proprietor of the whole of that parcel of land comprised in the Title Number NANDI/NDURIO/1019 and entitled to the exclusive possession of the said land measuring 0.60 Ha. The plaintiff avers that on or about 23.4.2014, the defendant unlawfully and without any colour of right and/or without the consent of the plaintiff entered into the said parcel of land, took possession of the same and illegally built temporary structures thereon and has since then wrongfully and unlawfully occupied the said land. The plaintiff further avers that the defendant's said actions amount to trespass and that he is still trespassing thereon to-date and that has destroyed the beacons and boundaries of the said parcel of land. Despite severally requesting the defendant and demanding that he vacates his said parcel of land, the defendant has refused to move out of the suit land and has continued with his said actions of trespass and damage/abuse of the plaintiff's land and has continued to issue threats of violence on the plaintiff and on anyone who will try to eject him from the suit land.

The plaintiff has enumerated the Particulars of the defendant's acts of trespass as :-

- (a) Entering onto the plaintiff's said land unlawfully and without any colour of right and/or without the consent of the plaintiff;***
- (b) Illegally taking possession of the plaintiff's said parcel of land;***
- (c) Constructing structures on the said parcel of land without the consent of the plaintiff;***
- (d) Remaining on the suit land without any colour of right and/or the consent of the plaintiff.***
- (e) Removing and/or destroying the beacons and/or boundaries of the suit land.***

By reasons of the matters aforesaid, the plaintiff has been deprived of the use and enjoyment of the said private land, and has thereby claims to have suffered loss and damage thus loss of mesne profits over the suit land and loss of beacons and boundaries of the suit land

The plaintiff prays for a declaration that the defendant and his servant and/or agents is a trespasser on the plaintiff's land known as **Title Number NAND/NDURIO/1019. He also prays for an order of eviction** against the defendant, his servants and/or agents, evicting the defendant and his said servants and agents from all that parcel of land comprised in **Title Number NANDI/NDURIO/1019**. Consequently he seeks for a permanent injunction restraining the defendant, his servants and/or agents from re-entering, occupying or continued occupation/possession and/or wasting the plaintiff's parcel of land comprised in **Title Number NAND/NDURIO/1019** and/or from doing anything that will interfere with and/or violate the plaintiff's proprietary rights and/or quiet possession in/over that parcel of land comprised in **Title No. NANDI/NDURIO/1019. Lastly, he seeks damages and/or mesne profits** from the date of trespass until the defendant delivers up possession of the said **Title No. NANDI/NDURIO/1019 plus costs of the suit.**

The Plaintiff testified that he is the registered proprietor of that parcel of land comprised in Title Number NANDI/NDURIO/1019. On or about 23rd April 2014, he discovered that Mr. Julius Kipyego Maiyo, the defendant herein had trespassed onto his said parcel of land and constructed temporary structures therein. He inquired from him as to what he had done and was doing on his parcel of land, but he threatened him with violence. As a law abiding citizen, he left and went to report the matter at Kobujoi Police Station. Pursuant to that report, Corporal Ong'at (of the said police station) summoned Mr. Julius Kipyego Maiyo, the defendant herein and Mr. Barnaba Kimeli A. Kichwen, the former owner of that parcel of land, to the station. He also advised the plaintiff to be present with his title document and fixed a date for them. All parties complied and upon confirming that indeed the land was the plaintiff's, he warned the said Mr. Maiyo not to do anything on the said land. He also advised him to obtain an eviction order from Court so that they could enforce/implement it. On or about 25th April 2014, he caused a demand letter to be written to the said Mr. Maiyo. In the said letter delivered to the defendant by way of registered post and also *through his wife Beatrice* and by a Court Process Server *Mr. Robinson Gitange*, he demanded the said Mr. Maiyo to vacate his said parcel of land but to-date he has not done so. That he has severally requested him to do so without success. That upon reporting the matter to the police station (as aforesaid) and upon him being warned not to construct anything further on his said land and upon being issued with the said demand letter, Mr. Maiyo re-located tea seedlings he wanted to plant on his land. That the said Mr. Maiyo has deprived him of the enjoyment of his said land thus causing him to suffer loss and damage.

The Plaintiff produced a Title Deed as evidence that the suit land was registered in his name. He also produced a certified copy of the Register whose import is that the registration was opened on 8.10.2012 in respect of Nandi/Ndurio registration section and Parcel number Nandi Ndurio/1019 measuring approximately 0.60 ha as shown in registry map sheet No. 11 created after subdivision of Plot No. 117.

On the 8.10.2012, the said parcel of land was registered in the name of Barnaba Kimeli A. Kichwen. The last transaction in the parcel of land was on 21.11.2012 when the Hassan Kipkemboi Ngeny plaintiff herein was registered as the proprietor of the parcel of land.

It is trite law that in accordance with the Land Registration Registration act Cap 300 Laws of Kenya, registration of a person as a proprietor of a parcel of land gives him indefeasible title with rights and privileges appurtenant thereto.

***Section 24 of the Land Registration Act Cap. 300 Laws of Kenya provides for Interest conferred by registration; thus-***

***(a) 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; and***

***(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.***

***Section 25 of the Land Registration Act Cap. 300 Laws of Kenya provides for Rights of a proprietor;***

thus-

*(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.*

Section 26 of Land Registration Act Cap. 300 Laws of Kenya provides that Certificate of title to be held as conclusive evidence of proprietorship, thus-

*1. 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 or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-*

*(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or*

*(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.*

*(2) A certified copy of any registered instrument, signed by the Registrar and sealed with Seal of the Registrar, shall be received in evidence in the same manner as the original.*

I am satisfied that the plaintiff has proved his case on a balance of probabilities that he is the registered proprietor of the parcel of land and therefore sections 24, 25 and 26 of the Land Registration Act apply. The defendant was served but failed to enter appearance and file defence. Moreover he was served with a hearing notice for hearing but did not attend. There is no evidence on record that the registration of the plaintiff was procured through fraud or misrepresentation or that the certificate was acquired unprocedurally or through a corrupt scheme

I do enter judgment for plaintiff and grant a declaration that the defendant and his servant and/or agents is a trespasser on the plaintiff's land known as **Title Number NAND/NDURIO/1019** and do issue an order of eviction against the defendant, his servants and/or agents, evicting the defendant and his said servants and agents from all that parcel of land comprised in **Title Number NANDI/NDURIO/1019**. Moreover an order of permanent injunction is hereby issued restraining the defendant, his servants and/or agents from re-entering, occupying or continued occupation/possession and/or wasting the plaintiff's parcel of land comprised in **Title Number NAND/NDURIO/1019** and/or from doing anything that will interfere with and/or violate the plaintiff's proprietary rights and/or quiet possession in/over that parcel of land comprised in **Title No. NANDI/NDURIO/1019**. **The prayer for damages and/or mesne profits from the date of trespass until the defendant delivers up possession of the said Title No. NANDI/NDURIO/1019 is not granted as the same was not proved.** I do award costs to the plaintiff. Orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF JUNE, 2015.**

**ANTHONY OMBWAYO**

**JUDGE**