



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT KERICHO

E.L.C NO.55 OF 2013

JOSEPH KARANJA KANGARA.....PLAINTIFF

VERSUS

GABRIEL JEPSANG CHIRCHIR.....1ST DEFENDANT

COSMAS TERER.....2ND DEFENDANT

J U D G M E N T

(Suit for eviction; plaintiff being owner of suit property; suit not defended; judgment entered for the plaintiff)

This suit was commenced by way of plaint filed on 22nd August, 2013. In the plaint, it is pleaded that the plaintiff is the registered proprietor of the land parcels Kericho/Kunyak/470 measuring 6.48 Ha and Kericho/Kunyak/471 measuring 4.85 Ha. It is pleaded that the plaintiff purchased the suit properties in the year 1971. It is further pleaded that the defendants without any colour of right and without the consent of the plaintiff, took possession of the said properties and erected residential structures to the detriment of the plaintiff. It is averred that despite attempts to have the defendants vacate, they have refused to do so. In the suit, the plaintiff has asked for orders of eviction, costs and interest.

Despite being served with summons, the defendants did not deem it fit to enter appearance or file defence. The suit is therefore undefended.

The plaintiff testified as the sole witness. He testified that he obtained title in the year 1995. The defendants entered the land in the year 1982. The plaintiff found the defendants on the land as they had been employed by the previous owner. He testified that the seller sold to him 28 acres and left the defendants with 4 acres. However the defendants entered his 28 acres in the year 1998 and built houses, planted coffee and cut down trees. He testified that he has asked them to leave in vain.

I have considered the evidence of the plaintiff. The same is uncontroverted as the defendants never challenged this suit. The evidence shows that the plaintiff is the registered proprietor of the suit property. I had some question marks as to whether his suit is not time barred, but given that the defendants have not contested the plaintiff's case and have not tabled any evidence of their own, it is not very clear to me what sort of occupation they have had; whether continuous or interrupted and whether it has been peaceful, so that time may start running in their favour and against the plaintiff. On the issue of limitation thereof, I opt to give the plaintiff the benefit of doubt.

The plaintiff has shown that he is the owner of the suit property. As owner, he is entitled to the right of

exclusive possession. This is brought out by the provisions of Section 25 of the Land Registration Act, Act No. 3 of 2012 which is drawn as follows :-

Rights of a proprietor.

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.

The defendants have not demonstrated any right over the properties of the plaintiff and I see no reason why the plaintiff's case should not succeed with costs. I hereby enter judgment for the plaintiff and make the following orders.

(i) The defendants are hereby ordered to vacate the land parcel Kericho/Kunyak/470 and 471 within 30 days of service of this judgment and/or decree, and in default, an order of eviction do issue and the defendants be evicted at their own cost.

(ii) The plaintiff shall have the costs of this suit.

Judgment accordingly.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 30th DAY OF OCTOBER, 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

In the presence of:

Mr. Caleb Koech holding brief for Mr. J.K.Kirui for Plaintiff

Defendants- Absent

Court assistant- Mr. Kenei