



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

CIVIL SUIT NO. 182 OF 2014

CLEMENTINA JEBET BARNGETUNY.....PLAINTIFF

VERSUS

JOHN KOECH.....1ST DEFENDANT

AUGUSTINE KIPTUM.....2ND DEFENDANT

JAMES NGETICH.....3RD DEFENDANT

DAVID KIPTARAR.....4TH DEFENDANT

RAYMOND KOSE.....5TH DEFENDANT

ALICE ARUSEI.....6TH DEFENDANT

DANIEL CHESUBET.....7TH DEFENDANT

STEPHEN CHERUIYOT.....8TH DEFENDANT

ALEXANDER CHEMWOLO.....9TH DEFENDANT

JUDGMENT

Clementina Jebet Barngetuny, (*hereinafter referred to as the plaintiff*) has brought this action against John Koech and 8 others claiming that the plaintiff together with her two children Elias Barngetuny and Gladys Jemutai Barngetuny are the legally registered owners of parcels No. Moiben/Kapsumbere Block 2 (Tachasis)/93 and Moiben/Kapsumbere Block 2 (Tachasis)/101.

That the plaintiff brings this suit on her own behalf and on behalf of her co-registered owners Elias Barngetuny and Gladys Jemutai Barngetuny for her own behalf and for the benefit of her children and avers that the defendants by themselves, their agents and or servants are each in illegal possession of portions of her parcel of land known as MOIBEN/KAPSUMBERE BLOCK 2(TACHASI)/101 as follows:

- (a) *John Koech* - *1st defendant - approximately - 1 acre*
- (b) *Augustine Kiptum* - *2nd defendant – approximately 1 acre*
- (c) *James Ngetich* - *3rd defendant – approximately 2 acres*

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| (d) | <i>David Kiptarar</i> | - | <i>4th defendant – approximately 1 acre</i> |
| (e) | <i>Raymond Kose</i> | - | <i>5th defendant – approximately 1 acre</i> |
| (f) | <i>Alice Arusei</i> | - | <i>6th defendant – approximately 0.5 acres</i> |
| (g) | <i>Daniel Chesubet</i> | - | <i>7th defendant – approximately 2 acres</i> |
| (h) | <i>Stephen Cheruiyot</i> | - | <i>8th defendant – approximately 0.5 acres</i> |
| (i) | <i>Alexander Chemwolo</i> | - | <i>9th defendant – approximately 1 acre</i> |

That the plaintiff further avers that the defendants illegal occupation and use of her parcel of land has denied her and her family the use, enjoyment and benefit of her parcel of land and that she and her family have suffered loss and damage and that despite demand and notice of intention to sue, the defendants have totally refused to vacate the suit land rendering this suit necessary.

That the plaintiff's claim against the defendants jointly and severally is for an order for the eviction of each of the defendants by themselves and their agents, servants, family members or any person whatsoever occupying the plaintiff's parcel of land purportedly with the permission of the defendants.

That the plaintiffs further claim against the defendants is for an order of permanent injunction to restrain each of the defendants by themselves, their agents and or servants or any person purporting to act on the permission of the defendants from entering into ploughing, leasing, selling transferring or in any other way dealing with the plaintiff's parcel of land known as MOIBEN/KIPSUMBERE BLOCK 2 (TACHASIS)/101.

The plaintiff prays for judgment against the defendants jointly and severally for an order of eviction to issue against each of the defendants jointly and severally together with any person purporting to occupy the plaintiff's parcel of land known as MOIBEN/KAPSUMBERE BLOCK 2 (TACHASIS)/101 and an order of permanent injunction to issue to restrain each of the defendants by themselves, their agents and or servants, and any person whatsoever purporting to act on permission of the defendants from entering into, ploughing, leasing, selling, transferring or in any other way dealing with the plaintiff's parcel of land known as MOIBEN/KAPSUMBERE BLOCK 2 (TACHASIS)/101. The defendants failed to enter Appearance and or file defence had judgment was entered in default and the matter slated for formal proof.

When the matter came up for hearing **Clementina Jebet Barngetuny** stated that she is the registered owner of parcels of land known as MOIBEN/KAPSUMBERE BLOCK 2 (TACHASIS)/93 and MOIBEN/KAPSUMBERE BLOCK 2 (TACHASIS)/101 together with Elias Barngetuny and Gladys Jemutai Barngetuny and that her co-registered owners are both her children duly registered as the owners of parcels of land No. Moiben/Kapsumbere Block 2 (Tachasis)/93 and Moiben/Kapsumbere Block 2 (Tachasis)/101.

That they got registered as such owners pursuant to the court judgment and orders issued vide Eldoret Cmcc No. 1353 of 2002 and subsequent ruling vide Eldoret Hcc Misc. Civil Application No. 75 of 2012. That previously, she had been co-registered with her mother-in-law Anna Koei Katonon but her mother in law had started to dispose off portions of the said parcels to the detriment of her children hence the suit. That the defendants were some of the purchasers who purported to purchase from her mother-in-law, despite the pendency of the suit. That the court in Eldoret Cmcc NO. 1352 of 2002 found in her favour, and ordered that the parcels of land be registered in her joint names together with those of her 2 children to protect it from disposal. That the defendant (Ann Koei Katonon) sought vide Eldoret Hcc Misc. Application No. 75 of 2012 to file an appeal but lost. The defendants have totally ignored her pleas to vacate from the land hence the suit herein. Their stay and occupation of the parcel of land is prejudicial to them and it is only just that they be ordered to vacate.

PW2, Elias Barngetuny stated that he is the son of the plaintiff herein and one of the registered owners of the parcels of land known as:

- (a) **MOIBEN/KAPSUMBERE BLOCK 2(TACHASIS)/93 and**
- (b) **MOIBEN/KAPSUMBERE BLOCK 2(TACHASIS)/101.**

That he got registered as such owner pursuant to the judgment of the court issued vide Eldoret Cmcc No. 1352 of 2002 and knows of his knowledge that the defendants are illegally on the land and have refused to vacate despite their various requests. That he has authorized the plaintiff to present this suit on his behalf as well as hers.

I have considered the pleadings and evidence on record and do find that the plaintiff produced a title deed for title No. Moiben/Kapsumbere Block 2(Tachasis)/101 measuring approximately 10.64 ha registered in Registry map sheet No. 1 certifying that **Clementina Jebet Barngetuny of ID No. 11792090, Elias Kibiwot Barngetuny of ID No. 27947450 and Gladys Jemutai Barngetuny of ID No. 30552857** of P. O. Box 48 – 30104, Moiben are registered as the absolute proprietors of the land comprised in the above mentioned title, subject to the entries in the register relating to the land and to such of the overriding interest set out in the section 30 of the Registered land Act (repealed) as may for the the time being subsist and affect the land. The title deed was given under the hand and seal of the Eldoret District Land registry as it then was on the 8.11.2012.

I do find that the plaintiff has satisfied this court that she is the proprietor of the suit land on balance of probabilities and therefore, the court grants judgment against the defendants jointly and severally for an order of eviction to issue against each of the defendants jointly and severally together with any person purporting to occupy the plaintiff's parcel of land known as MOIBEN/KAPSUMBERE BLOCK 2 (TACHASIS)/101 and an order of permanent injunction to issue to restrain each of the defendants by themselves, their agents and or servants, and any person whatsoever purporting to act on permission of the defendants from entering into, ploughing, leasing, selling, transferring or in any other way dealing with the plaintiff's parcel of land known as MOIBEN/KAPSUMBERE BLOCK 2 (TACHASIS)/101. The defendants to be given 30 days notice before the order is executed. Costs to the plaintiff'. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 23RD DAY OF OCTOBER, 2015.

ANTONY OMBWAYO

JUDGE