



**REPUBLIC OF KENYA**

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

**E&L CASE NO. 276 OF 2014**

**EDWIN KIBII KIPTUI.....PLAINTIFF**

**VERSUS**

**CHARLES KIPCHUMBA KIPTUI.....DEFENDANT**

**JUDGMENT**

**Edwin Kibii Kiptui, (hereinafter referred to as the plaintiff)** has sued **Charles Kipchumba Kiptui (hereinafter referred to as the defendant)** claiming that he is the registered proprietor of all that parcel of land known as **EWALEL/SERETUNIN/441** obtaining by measurement 7.5 acres or thereabout. It is the plaintiff's case that at one time he housed the defendant as a brother as the defendant attended school. However later on, when the plaintiff required the defendant to move out of the plaintiff's home, the defendant refused and has since declined to so move out.

That the plaintiff prays for an order of eviction to issue to remove the defendant, his family member, agents, servants and/or any other person claiming interest through the defendant from all that parcel of land known as EWALEL/SERETUNIN/441 plus costs and interest thereon.. That despite demand and notice of suit, the defendant has neglected, refused and/or failed to remove himself from the subject matter premises.

The plaintiff served the defendant with the plaint and summons to enter appearance but the latter failed to enter appearance and file defence hence judgment was entered in default and against the defendant for the plaintiff.

When the matter came up for formal proof, the plaintiff Edwin Kibii Kiptui testified that he is the registered owner of Land Parcel No. EWALEL/SERETUNIN/441. The defendant herein is his younger brother and sometime in the past, he used to stay with the defendant at his home on the said land as he educated him. He has since required the defendant to vacate his land because he has his own land but the defendant has refused. Despite persistent requests to the defendant to remove himself even by the administration and the clan, he has refused to do so. He has vowed not to move out.

The defendant has in the recent past began destroying his properties and his recent conduct is the subject of trial at the Magistrate's Court at Kabarnet in Criminal Case No. 749 of 2013 in which the defendant is charged with destroying his trees. His conduct has since become a trespass and a nuisance. He is ill-mannered and very insolent. He prays that he removes himself from his land or evicted forcibly.

The plaintiff produced certificate of official Search in respect of the suit land and the title deed both being evidence that the plaintiff is registered as absolute proprietor of the land comprised in title number Ewalel/Seretunin/441 subject to the entries in the register relating to the land and to such overriding interests set out in the Land Registration Act.

**Section 25 of the land registration Act provides that** 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 to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register and 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.

**Section 26 provides that** 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 on the ground of fraud or misrepresentation to which the person is proved to be a party; or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

I have considered the evidence on record and the relevant law and do find that the plaintiff has proved on a balance of probabilities that he is the registered absolute owner of the parcel of land and therefore enjoys all rights and privileges appurtenant thereto.

The upshot of above is that an order of eviction is hereby issued to remove the defendant, his family members, agents, servants and/or any other person claiming interest through the defendant from Land Parcel No. EWALEL/SERETUNIN/441. Each party to bear his own costs this being a dispute between family members.

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

**ANTONY OMBWAYO**

**JUDGE**