

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L CASE NO. 240 OF 2014

PAULINA CHEMARICH.....PLAINTIFF

VERSUS

JONAH B. KIMURTO.....1ST DEFENDANT

MUSA CHERUIYOT.....2ND DEFENDANT

WILLIAM K. CHERUIYOT.....3RD DEFENDANT

JUDGMENT

Paulina Chemarich, (hereinafter referred to as the plaintiff) has brought this suit against **Jonah B. Kimurto, Musa Cheruiyot and William K. Cheruiyot** (*hereinafter referred to as the defendants*) claiming that at all material times relevant to this suit the plaintiff was and still is the sole registered owner of all that parcel of land known as **L. R. No. Kabiemit/Flax/Block 1 (Chepkorio)/232** measuring approximately 1.330 ha.

She claims that the defendants herein jointly and severally on several occasions since the year 2004 encroached, trespassed and/or claimed part of the aforesaid parcel of land from the plaintiff. They have without any colour of right prevented the plaintiff from enjoying her legally acquired parcel of land.

That despite several meetings and/or warnings from the plaintiff to desist from interfering with the plaintiff's parcel of land the defendants have been adamant necessitating the filing of this suit.

The plaintiff's claim against the defendants jointly and severally is for an order of permanent injunction restraining the defendants by themselves their servants and/or agents from interfering, inter-meddling and/or in any other manner dealing with the plaintiffs use, possession and/or ownership of all that parcel of land known as L. R. NO. KABIEMIT/FLAX/BLOCK 1 (CHEPKORIO) 232 measuring approximately 1.330 ha only and an order that the defendants pay mesne profits and general damages for unlawful encroachment into the suit land and costs of this suit.

The defendants were served with the plaint and summons to enter appearance but failed to enter appearance and/or file defence hence interlocutory judgment was entered in default.

The plaintiff testified that she is the legal owner of L.R. NO. KABIEMIT/FLAX BLOCK 1 (CHEPKORIO) 232 measuring approximately 1.330 ha having purchased it from a white farmer/settler called well wood. The white settlers land stretched to the stream called Mindililwo bordering the Elgeyo Marakwet County with Uasin Gishu County which the said white settler had fenced off the river using a wire fence so as to allow the domestic animals to freely drink water. That the defendants herein have encroached into her parcel of from the river/stream without any consent from her forcing her to take the necessary steps. She testified that her land stretches upto the stream and that there is no other person even the defendants herein in between. They have been having several meetings trying to solve the same problem in vain since the defendants have been adamant and refusing/neglecting to listen to the truth. She had earlier reported her grievances to the area chief who later referred her to the District Officer and thereafter the District Officer referred them to the Uasin Gishu Land Registrar who arbitrated this case. She states that she has many witnesses from both Uasin Gishu and Elgeyo Marakwet County including Mzee Joseph Rono, Rokocho Chesiror and Wilson Kapkong among others who have all heard this case and confirmed that she is the only legal owner of the said parcel of land and the defendants are strangers

who should be restrained from interfering with her parcel. 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 **L. R. No. Kabiemit/Flax/Block 1 (Chepkorio)/232** 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 rights and privileges appurtenant 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 the above is that judgment is entered against the defendants in terms of an order of permanent injunction restraining the defendants by themselves their servants and/or agents from interfering, inter-meddling and/or in any other manner dealing with the plaintiffs use, possession and/or ownership of all that parcel of land known as L. R. NO. KABIEMIT/FLAX/BLOCK 1 (CHEPKORIO) 232 measuring approximately 1.330 ha only plus costs of this suit. In the alternative, the court orders that the defendants be evicted from the suit parcel after expiry of 30 days notice which should be issued by the plaintiff within 5 days of this judgment. The claim for mesne profits is not proved and therefore the same is not allowed. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 6TH DAY OF OCTOBER, 2015.

ANTONY OMBWAYO

JUDGE