



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 115 OF 2014

ABRAHAM KIPTANUI KIPKECH.....PLAINTIFF

VERSUS

BEN CHANGWONY KIPROP.....DEFENDANT

JUDGMENT

Abraham Kiptanui Kipkech hereinafter referred as the plaintiff has come to court by way of plaint against **Ben Chengwony Kiprop** hereinafter referred to as the defendant claiming that he is the legal and registered proprietor of all that parcel of land known as Lelan/Kaptalamwa/658 measuring 46 acres.

He avers that the defendant on or about 1st March, 2014, unlawfully entered onto the plaintiff's land parcel **No. LELAN/KAPTALAMWA/658** and fenced off 4 acres thereof without the consent or authority of the Plaintiff. That the defendant after fencing off the 4 acres of the parcel proceeded to erect some temporary dwelling house and settled his family therein. That the defendant has unlawfully ploughed the land and planted a potato crop on almost an acre of the illegally annexed part of the land.

The plaintiff claims that the defendant is a total stranger and has not any dealings with the plaintiff whatsoever and his forcible entry and occupation of the land is unlawful and untenable and therefore the defendant is a trespasser on the land and is liable for eviction and damages for trespass to land.

The plaintiff avers that he has issued a demand letter to defendant in vain thus rendering these proceedings necessary and that there have not been any present or previous proceedings involving the parties hereto and that the cause of action arose within Elgeyo-Marakwet County within the jurisdiction of this Honourable Court.

Reasons wherefore, he prays that there be an order of eviction of the defendant, agents or servants from suit land and that there be a permanent injunction restraining the defendant, agents or servants from entering, cultivating or in any way interfering with the Plaintiff's land. He also prays for damages for trespass and costs of the suit.

The defendant was served but failed to enter appearance and or file defence. Interlocutory judgment was entered on 25.11.2014.

The matter proceeded for formal proof on the 3.7.2015. The plaintiff adopted his statement filed on 10.4.2014.

The plaintiff testified as per the statement that he is the the registered owner of all that parcel of land known as **LELAN/KAPTALAMWA/658** measuring 6.4 hectares and he has settled his three houses on the said parcel of land. On or about early March 2014 the defendant forcibly entered onto his land and

started fencing off 4 acres and erected a temporary dwelling house without the consent or authority or any colour of right, the Defendant also moved and settled his family on his land has already planted potatoes on almost 1 acre of the parcel, when the defendant moved onto his land, he visited the defendant in company of other village elders and asked him to move out from the land but the defendant unreasonably refused to comply. The defendant is now preparing to plough the remainder of the land to the detriment of his proprietary rights over his land. All his efforts to have him remove himself, his family and structures from the suit land have been fruitless and the defendant keeps alleging that the piece was sold to him by a third party by the name Wilson Keitany. The purported purchase of the piece from the 3rd party cannot and does not bind him as the alleged agreement (if any) is a nullity *ab initio* and indeed inconsequential. His efforts to have the local chief advise him to apply good sense to the matter have fallen on deaf ears. He issued a demand letter through his advocates.

The plaintiff produced a title deed in respect of the suit land and a certificate of official search both showing that he is the registered absolute owner of the suit property. He also produced photographs and a demand letter.

The title deed was issued on the 21.2.2014 despite the fact that the plaintiff was registered as the proprietor of the suit parcel on 3.7.2013 under the Land Registration Act No. 3 of 2012.

The parcel of land is described as Lelan/Kaptalamwa/658 and measuring 5.666 hectares and is found in Registry map sheet No. 7 and 11.

In the title deed, it is certified that Kiptanui Kipkech of Identity Card No. 3539845 of P. O. Box 500, Eldoret is now the registered absolute proprietor of the land comprised in the aforementioned title, subject to the entries in the register relating to the land and to such of the overriding interests set out in section 28 of the Laws of Kenya Act No. 3 of 2012 as may for to the being subsist and affect the land.

I reiterate that the defendant neither entered appearance nor filed defence and did not come to court to give evidence. This court finds that the evidence of the plaintiff is not controverted and therefore the plaintiff has proved his case on a balance of probabilities and orders that the defendant, his agents or servants be evicted from the suit land after Notice of 30 days. The court further grants an order/permanent injunction restraining the defendant, agents or servants from entering, cultivating or in any way interfering with the plaintiff's land.

Damages for trespass were not proved hence the prayer for damages is declined. Costs of the suit to the plaintiff. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 2ND DAY OF OCTOBER, 2015.

ANTONY OMBWAYO

JUDGE