



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

CASE NO. 324 OF 2013

ROFINA KETER.....PLAINTIFF

VERSUS

HARON KIMOSONG MELI.....1ST DEFENDANT

KEYI ALUVISIA.....2ND DEFENDANT

KELVIN MAYODI.....3RD DEFENDANT

FREDRICK ZACHARIA.....4TH DEFENDANT

JUDGMENT

Rofina Keter, (hereinafter known as the plaintiff) has sued Haron Kimosop Meli, Keyi Aluvisia, Kelvin Mayodi and Fredrick Zacharia (**hereinafter referred to as defendants**) claiming that the defendants have trespassed into the plaintiff's land reference **No. Nandi/Chepkumia/1389** and occupied portions therein and are using the same to the plaintiff's detriment. Despite the plaintiff's protest that the defendants desist from using the land and request that they vacate, the defendants have refused to comply.

She prays for an order that the defendants pay mesne profits at the rate of Kshs.30,000 per acre per a year effective from 2013. She also prays for an order that the defendants be evicted from the parcel of land and that the structures therein to be demolished.

The defendants filed a joint statement of defence claiming that they had been in occupation of the parcel of land before the plaintiff became registered and that they have been in occupation for more than 12 years. The defendants further claim that there were previous proceedings in respect of the suit land being Kapsabet Division Land Disputes Tribunal case No. 3 of 2007.

The matter came up for hearing on 17.3.2015 when the plaintiff testified that she does not know the defendants who are occupying her land illegally. She produced the certificate of official search as evidence that the land parcel is registered in her name.

On cross-examination by the 1st defendant, she claimed that she was chased away from the land by the 1st defendant who wanted to kill her. She further claimed that she did not know the defendants.

On his part, the first defendant claimed that he entered the suit land in 1994 and that the plaintiff is his paternal auntie. He claimed that the land belonged to his uncle but somebody had trespassed on the land. His father dealt with the trespasser and managed to evict him and therefore was awarded the land by the clan. He was to be refunded the expenses but it never happened and therefore it was agreed that he be given the land in lieu of money. The defendant was given the land by his father and he stays on the

land with his siblings. The plaintiff secretly did succession of her father's estate and was confirmed as the heir and registered as the proprietor of the parcel of land through transmission.

The second defendant, **Keyi Aluvisia** also known as **Alfred Kafu** claimed that he was sold land on 20.2.2006 and asked for time to bring the agreement of sale. The court gave an adjournment to the rest of the defendants to prepare for hearing as they appeared not to understand what was happening in court but they never returned on 25.3.2013 as scheduled. On 13.4.2015 again they failed to turn up, however, the court indulged them and gave them a hearing thus on 14.4.2015, again, they never turned up.

On the said date, Mr. Momanyi appeared for plaintiff but Sang & Company Advocates who had come on record did not send a representative. The defence case was closed and the matter scheduled for submissions on 22.4.2015.

Mr. Momanyi filed submissions on 16.4.2015 whose **gravamen** is that the plaintiff is the registered proprietor of the parcel of land and therefore entitled to use her land since 2006. That she is entitled to Kshs.30,000/= per acre per year which translates the Kshs.90,000/= per year for 9 years hence a grand total of Kshs.810,000/=.

The defendants on the other hand filed submissions whose gist is that the plaintiff did not prove her case on a balance of probabilities as she did not state how she became the registered owner of the disputed parcel of land. The submissions filed by Sang & Company Advocates bounds on evidence that was not availed to this court by the defendants and therefore the same could be relied upon at this stage.

I have considered the pleadings, evidence on record and submissions of parties and do find that the plaintiff has proved on a balance of probabilities that she is the registered owner of parcel title No. Nandi/Chepkumia/1389. The nature of title is absolute registered on 8.3.2006 and title issued. This evidence is pursuant a certificate of official search issued on 27.5.2013. On the other hand, the defendants are in occupation of the parcel of land. The 1st defendant explained how he came into possession of the parcel of land. This court finds that the 1st defendant is in illegal possession of the parcel of land as the said parcel belonged to the plaintiff's husband who was the 1st defendant's uncle. The fact that the 1st defendant's father paid some expenses in respect of the land, did not justify him taking possession of the same. The 2nd and 3rd defendants did not offer any viable defence to the claim by the plaintiffs.

The upshot of the above is that this court finds that the plaintiff being the registered absolute owner of the suit property is entitled to all rights and privileges appurtenant to the parcel of land.

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.

Judgment is hereby entered for the plaintiff in terms that the structures erected by the defendants be demolished and the defendants be evicted from the suit parcel after an expiry of 30 days from the date of the judgment. In the alternative, the defendants be at liberty to vacate the suit parcel within 30 days

from the date of the judgment.

The plaintiff has proved that she is entitled to mesne profits at Kshs.30,000/= per acre for each from the date of issuing notice thus on 24.5.2013 to the date of judgment. The grand figure on mesne profits works out as follows: **Ksh.30,000 x 3 x2 = 180,000**. Ultimately, the plaintiff is awarded mesne profits of Ksh.180,000/=. Orders accordingly.

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

ANTONY OMBWAYO

JUDGE