



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 181 OF 2014

JOSEPH NG'ANG'A WAIKWA.....PLAINTIFF

VERSUS

JANE WAMBUI.....1ST DEFENDANT

SAMWEL GITONGA.....2ND DEFENDANT

WILSON K. NG'ANG'A.....3RD DEFENDANT

PETER MBURU.....4TH DEFENDANT

JUDGMENT

Joseph Ng'ang'a Waikwa, (*hereinafter referred to as the plaintiff*) has sued Jane Wambui, Samwel Gitonga, Wilson Gitonga and Peter Mburu, hereinafter referred to as the defendants claiming that the plaintiff is the registered owner of whole land parcel number **Moi's Bridge/Ziwa Block 16(Chebarus)/151** situated in Matunda in Uasin Gishu County. The plaintiff avers that the defendants on diverse occasions and up to date have forcefully and without any justification entered into the plaintiff's parcel of land without the plaintiff's permission cut the trees and make the bricks and ploughed on the said land.

The defendants on several occasions have resorted to assaulting the plaintiff after forcefully entering the plaintiff's parcel of land. The plaintiff reported the matter to Matunda Police Station and the local chief but the problem was not solved to stop the defendants from trespassing and interfering with the plaintiff's parcel of land. The plaintiff claims to be an old man living alone and cannot protect himself from the attack of the defendants. The defendants have deprived the plaintiff the use of his land and peaceful living on his farm. Demand has been made and notice of intention to sue duly given. The plaintiff prays for judgment against the defendants jointly and severally for a permanent injunction to prevent the defendants, their agents and/or servants from re-entering, trespassing, ploughing, constructing thereon, and/or in any other manner dealing with land parcel number **Moi's Bridge/Ziwa Block 16 (CHEBARUS)/151** and an eviction order to issue, demolition of structures erected thereon by the defendants. Cost of this suit.

Judgment was entered on the 27.11.2014 for failure by the defendants to enter appearance or file a defence. When the matter came for formal proof, the plaintiff testified that he is the registered owner of land parcel **No. Chebarus Farm L.R. 11564 Plot No. 151** situated in Matunda in Uasin Gishu County measuring 11 acres. There is a woman land with whom they had stayed on the said land. She left his home but later she returned with her four children, sons and fought him. He reported the assault at Matunda Police Station as it is in the (OB). One of the woman's sons by the name of Kitonga has been trespassing to cut his trees and use the soil to make bricks without his permission.

He made a report at the police station and the local chief but nothing was done to stop the said person (Kitonga) from interfering with his land. The said woman and her sons have no rights to his land they entered using force and threatening him. He want the said woman and her children not to interfere with his land and prays that they be stopped from entering his land.

I have considered the pleadings and evidence on record and do find that the plaintiff has proved his case beyond reasonable doubt that he is the registered proprietor of the suit land. The defendants were served but neither entered appearance nor filed defence. Section 25(1) of the Land Registration Act provides as follows:-

25. (1) 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-

- 1. To the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and*
- 2. To such liabilities, rights and interests as affect the same and are declared by section 28 not to noting on the register unless the controversy is expressed in the register.*

The Plaintiff having been registered as proprietor and having been issued with a title is in terms of section 26 (1) of the *Registration of Lands Act entitled to the protection of the law.*

26 (1) The certificate of title issued by the Registrar upon registration or to a purchaser of land upon 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-

- 1. On the grounds of fraud or misrepresentation to which the person is proved to be a party, or*
- 2. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.*

I am satisfied that the Plaintiffs is regularly and procedurally registered as proprietor of the suit property and that upon registration the Plaintiff under the provisions of section 24 of the Land Registration Act became vested with the absolute ownership of the suit property and further under section 25 of the Act the rights of ownership acquired by the Plaintiffs are indefeasible except as provided under the Act. I do enter judgment for plaintiff against the defendants jointly and severally in terms of an order of eviction from the said property and an of demolition of structures erected thereon by the defendants and a permanent injunction is hereby issued to prevent the defendants, their agents and/or servants from re-entering, trespassing, ploughing, constructing thereon, and/or in any other manner dealing with land parcel number **Moi's Bridge/Ziwa Block 16 (CHEBARUS)/151**. Costs of the suit to the plaintiff.

DATED AND DELIVERED AT ELDORET THIS 30TH DAY OF NOVEMBER, 2015.

ANTONY OMBWAYO

JUDGE