

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E & L CASE NO. 349 OF 2014

AZINA SAID

CHEPKEMBOI:.....PLAINTIFF

VERSUS

NOAH MARTIM TOO & 2

OTHERS:.....DEFENDANT

JUDGMENT

The plaintiff, Azina Chepkemboi Said has sued Noah Martim Too, Christopher Kipchoge Bitok and Kibitok Arap Too (*herein after referred to as the defendants*). The Plaintiff avers that she was given land reference number Nandi/Kamobo/2267 as a gift from her brother Salim Kibet Said (now deceased) and she is the registered proprietor of the same.

It is the Plaintiff's case that the defendants have trespassed into the suit property and started constructing a house and are harvesting sand on it. As a result of the said trespass the plaintiff has been denied access to his land and his safety and that of his family has been threatened.

The Plaintiff avers that the defendants' action are fraudulently unlawful, illegal and void and amounts to interference with the plaintiff's rightful occupation of the parcel as more particularized hereunder thus:-

- a. ***Illegal entering into the Plaintiff's parcel of land without her permission, consent or authority.***
- b. ***Illegally starting to construct a house on the plaintiff's parcel of land without any lawful justification.***
- c. ***Illegally purporting to be owner of the parcel of land.***

The Plaintiff's claim against the defendants is for a declaration that she is the registered owner of Nandi/Kamobo/2267 and any trespass or unlawful entry by the defendants is illegal, fraudulent, null and void and the defendants should be evicted from the said parcel of land, and a permanent injunction restraining the defendants, servants and or agents from entering into, occupying, interrupting, trespassing, selling, transferring, wasting, constructing or encumbering and or dealing in any way with the Plaintiff's quiet possession, use and enjoyment and stop him from doing any acts that are inconsistent with the Plaintiff's right as the rightful owner and or occupier of the land parcel number Nandi/Kamobo/2267 and costs of this suit and interest at court rates.

The defendants were served with summons to enter appearance and file defence but never did so. Moreover, the defendant were served with a hearing notice but never attended court during hearing.

The Plaintiff testified that she lives in Mombasa and does Taxi business. She is the registered proprietor of Nandi/Kamobo/2267 measuring 0.8 acres. She produced the title deed and a certificate of official search and proved that she was gifted the land by Salim Kibet Said, her brother before he died. The Defendants who are not her relatives entered the land more than three years when his brother was a proprietor. They have refused to vacate upon demand and therefore he prays for eviction orders and costs.

I have considered the evidence of the record and do find that the Plaintiff is registered as absolute proprietor of the land comprised in Nandi/Kamobo/2267 subject to entries in the register relating to the

land and to such of the overriding interests set out in Section 28 of the Land Registration Act No. 3 of 2012 as may for the time being subsist and affect the land.

The title deed was given under the hand and seal of the Land Registrar of Nandi District Land Registry on the 4.11.2014.

The official search done on the 4.11.2014 indicates that the property is registered in the name of Azina Chepkemboi Said as absolute proprietor. As registered owner, the defendant is entitled to enjoy the proprietary rights of ownership to the exclusion of all others. This is a right enshrined in **Sections 25 and 26 of the Land Registration Act, Act No. 3 of 2012.** Section 25, of the **Land Registration Act, Act No. 3 of 2012.** 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. Such holding is only subject to leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; or to the overriding interests noted in Section 28 of the LRA. Under Section 26 of the **Land Registration Act, Act No. 3 of 2012.**, the Certificate of title is to 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 only to the encumbrances, easements, restrictions and conditions contained in the certificate. The title of the proprietor is not 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 do find that the Plaintiff has proved her case on balance of probability and do enter judgment in her favour in terms of a declaration that she is the registered owner of Nandi/Kamobo/2267 and any trespass or unlawful entry by the defendants is illegal, fraudulent, null and void and an order is hereby made that the defendants be evicted from the said parcel of land, and a permanent injunction is hereby issued restraining the defendants, servants and or agents from entering into, occupying, interrupting, trespassing, selling, transferring, wasting, constructing or encumbering and or dealing in any way with the Plaintiff's quiet possession, use and enjoyment. I do grant costs to the plaintiffs. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 20TH DAY OF NOVEMBER, 2015

JUSTICE OMBWAYO ANTONY

ENVIRONMENT AND LAND COURT AT ELDORET