



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KERICHO

ENVIRONMENT & LAND CASE NO.15 OF 2014

STEPHEN KIPKORIR KERICH.....1ST PLAINTIFF

JOSEPH KIMUTAI KERICH.....2ND PLAINTIFF

VERSUS

DAVID KIPRONO LANGAT.....1ST DEFENDANT

FRANCIS KIRUI.....2ND DEFENDANT

JOHN CHERUIYOT.....3RD DEFENDANT

JOYCE.....4TH DEFENDANT

J U D G M E N T.

(Suit for eviction; plaintiffs being owners of the suit property; no defence filed by the defendants; judgment entered for the plaintiffs; token award on damages made)

This case was commenced by way of plaint filed on 26th March 2014. The case of the two plaintiffs as pleaded, is that they are the registered proprietors of the land parcel Kericho/Chemagel/3070. It is their case that the defendants have encroached into their property and have refused to move out despite the plaintiffs giving them notice to vacate. In the plaint, they asked for the following orders :-

(a) Order of eviction of the defendants from the land parcel Kericho/Chemagel/3070.

(b) Damages for trespass.

(c) Costs of the suit.

Despite being served, the defendants did not enter appearance nor file any defence. The matter therefore proceeded as an undefended cause with the two plaintiffs giving evidence.

It was their evidence that they are the registered proprietors of the suit property and they produced the title deed and official search to demonstrate their ownership. The same shows that the plaintiffs became proprietors of the suit property in the year 1994. They testified that the land was vacant until the defendants encroached into it from the year 2007 and erected some kiosks. They stated that before suit, they engaged the Land Registrar and District Commissioner to ask the defendants to move out but they have failed to do so. They also wrote to the defendants, through the letter dated 8th February 2014, in

vain. That is the reason they now ask for orders of eviction.

The evidence is uncontroverted and it is clear that the plaintiffs are the owners of the suit property. The defendants have not given any reason why they should remain in the property of the plaintiffs. As owners, the plaintiffs have the right of exclusive possession of the property. This is granted by **Section 25** of the **Land Registration Act, Act No. 6 of 2012** which is drawn 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—

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) 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.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

As I mentioned before, the defendants have not justified their presence on the plaintiffs' land. The plaintiffs are fully entitled to have them removed from their land. I order the defendants to vacate the suit property within 14 days of service of this judgment or decree and in default, an eviction order do issue. There is a prayer for damages. Little, if any, evidence was led to enable the court make a good assessment of the loss that the plaintiffs have suffered by the presence of the defendants on their land. However, the defendants are clearly trespassers and I will award a token Kshs. 25,000/= to the plaintiffs in recognition that their rights to the property has been infringed by the defendants. The plaintiffs shall also have the costs of this suit.

Judgment accordingly.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 13th DAY OF NOVEMBER, 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

In the presence of;

1. M/s Geoffrey Kipngetich & Co. Advocates for Plaintiffs- Absent.
2. Defendants did not enter appearance- Absent.
3. Court Assistant-Kenei.