



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L 402 OF 2013**

**STANLEY KIPRONO CHIRCHIR.....PLAINTIFF**

**VS**

**PRICILLA SIRMA & 2 OTHERS.....DEFENDANT**

***(Suit by plaintiff seeking orders of eviction and permanent injunction against the defendants; defendants not filing any defence; plaintiff's suit uncontested; plaintiff being the registered owner of the suit land; defendants not demonstrating any competing claim; no reason why plaintiff's suit should not succeed; judgment entered for the plaintiff)***

**JUDGMENT**

This suit was instituted by way of plaint filed on 30 July 2013. In the plaint, it is pleaded that the plaintiff is the registered owner of the land parcel Nandi/Ndurio/802 (the suit land) measuring 2.43 hectares which arose from a sub-division of the parcel Nandi/Ndurio/182. It is stated that the 1st defendant and her two sons, the 2nd and 3rd defendants have illegally moved into the suit land. The plaintiff has sought an order of eviction and a permanent injunction to restrain the defendants from being on the suit land.

The defendants were served with summons but they did not enter appearance nor file a statement of defence. The matter was listed for hearing on 20 February 2014 and despite being served with a hearing notice, the defendants did not attend. The matter therefore proceeded with the sole evidence of the plaintiff.

The plaintiff testified that he bought the suit land from the husband of the 1st defendant who was father to the 2nd and 3rd defendants. The suit land was then sub-divided from the parent title, parcel No. 182, with three sub-divisions being created. These are parcel numbers 801, 802, and 803. The parcel No. 802 was transferred to the plaintiff and the plaintiff got title to the suit land. He produced the title deed as an exhibit. The title deed shows that the plaintiff became registered as owner of the suit land on 21 February 2006. The seller died in the year 2012. The plaintiff testified that the defendants have continued to plough the suit land and have denied him access and that is the reason he has sought the orders herein.

The defendants did not participate in these proceedings. The only evidence that is before me is that tendered by the plaintiff and the same is uncontroverted. I have seen the title deed in the name of the plaintiff and there is no doubt that he is the registered owner of the suit land. As registered owner, he is entitled to all rights vested in the ownership including the right of exclusive use and possession of the suit land. These rights are recognized in Section 25 of the Land Registration Act, Act No.3 of 2012 which provides as follows :-

***S. 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.*

The defendants have not contested the assertions of the plaintiff and have not given any competing claim that would entitle them to the land. There is no reason why I should deny the plaintiff the orders sought. I therefore enter judgment for the plaintiff. I order the defendants to vacate the suit land forthwith and no later than 14 days of service of the judgement and/or decree. If they fail to vacate, the plaintiff may apply for an eviction order and the defendants shall bear any costs of eviction. I also issue an order of permanent injunction restraining them from any further interference with the suit land. As to costs of the suit I order that each party bears its own costs save for any costs of eviction.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 31ST DAY OF MARCH 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET.**

***Delivered in the presence of:***

***Mr. Choge for plaintiff***

***N/A for defendants who never entered appearance***