



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 949 OF 2012

Formerly HCC 25 of 2011

ANNAH JEPKOSGEI NGETICH.....PLAINTIFF

VS

WILSON KITUR MUTAI.....DEFENDANT

(Suit by plaintiff for eviction and a permanent injunction to restrain the defendant from the suit land; plaintiff having title to the suit land; no defence filed by defendant; evidence of plaintiff uncontroverted; defendant having not demonstrated any rights over the said land; judgment entered for the plaintiff)

JUDGMENT

In this suit, the plaintiff has averred that she is the registered owner of the land parcel Soy/Kapsang Block 5 (Ziwa) / 181 measuring 2.08 acres. It is her case that the defendant has illegally occupied it and has refused to move out. She has thus sought orders to have the defendant evicted from the said land, a permanent injunction to restrain the defendant from the suit land and mesne profits.

The defendant despite being served with summons failed to enter any appearance nor file defence. Neither did he attend during the hearing of the matter. The suit therefore proceeded ex-parte with the plaintiff testifying and calling one witness.

The plaintiff produced the title deed to demonstrate that she is the registered owner of the suit land. She was a member of Ziwa Holding, presumably a land buying company, and by virtue of being member, she had shares equivalent to 70 acres. She got 68 acres which was less than the 70 acres that she was entitled to. It emerged later that her other 2 acres were merged into the land of the defendant. The defendant's land was thus reduced by the 2 acres and a title was issued to the plaintiff. That title is the subject matter of this suit. Despite being advised to move out of the land, the defendant failed to do so hence provoking this suit.

I have considered the evidence adduced. The same has not been controverted by the defendant. It is clear that the plaintiff holds title to the suit land. As title holder, she is entitled to all proprietary rights including the right of exclusive possession. These rights are laid out 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.

There is no defence and no counterclaim filed by the defendant to demonstrate that he has any rights over the suit land.

I therefore have no reason to deny the plaintiff the prayers that she has sought, save for the claim for mesne profits, for which no evidence was led to enable me determine the loss that the plaintiff has suffered. But I appreciate that the defendant has been in illegal occupation, and in my discretion, I award the plaintiff a sum of Kshs. 50,000/= in general damages for trespass in recognition of the fact that the defendant has unlawfully deprived the plaintiff of the use of the suit land. The defendant shall also bear the costs of this suit.

In the circumstances, I enter judgment for the plaintiff and make the following orders :-

(a) The defendant has not demonstrated any interest in the land parcel Soy/Kapsang Block 5 (Ziwa)/181 and therefore has no rights over the said land.

(b) The defendant is hereby ordered to vacate the land parcel Soy/Kapsang Block 5 (Ziwa)/181 within 14 days of service of this judgment or decree and in default the plaintiff be at liberty to apply for his eviction.

(c) The defendant is hereby permanently restrained from entering, being upon, utilizing or in any other way dealing with the land parcel Soy/Kapsang Block 5 (Ziwa) /181.

(d) The defendant shall pay to the plaintiff general damages of Kshs. 50,000/= for trespass.

(e) The defendant shall bear costs of this suit.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 17TH DAY OF JULY 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Mr. Mukabane holding brief for Mr. A.K. Chepkwony for plaintiff.

N/A for defendant.