



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E&L 747 OF 2012

Formerly HCC 147 OF 2011

SOLOMON K. SONGOK.....PLAINTIFF

VS

SUSAN JEPKOSGEI.....DEFENDANT

(Claim by plaintiff over land; defendant having been purportedly issued with a title by Municipal Council of Eldoret; Municipal Council having not issued such lease; no defence filed by defendant and no explanation as to how she obtained the lease; such lease could only have been obtained illegally; purported lease of defendant cancelled; judgment entered for the plaintiff)

JUDGMENT

This suit was commenced by way of plaint filed on 24 August 2011. In the plaint, the plaintiff has pleaded that he was allotted the land parcel Eldoret Municipality Block 15/829 measuring 0.0306 Ha (the suit land). In the month of May 2011, he went to conduct a search only to find that a lease had been issued to the defendant on 7 February 2011. It is his position that the lease was fraudulently and/or illegally issued to the defendant. The following particulars of illegality are pleaded against the defendant :-

- (a) Taking possession and/or illegally and/or fraudulently acquiring title over the suit land without the consent of the plaintiff and consequently violating the plaintiff's constitutional right to the peaceful enjoyment of his proprietary rights.*
- (b) Trespassing and/or encroaching into the plaintiff's parcel of land.*
- (c) Failing to comply with the mandatory legal requirements regulating property in land and in particular failing to follow all the procedures precedent to the issuance of a certificate of title.*
- (d) Presenting a forged/fake lease purportedly executed by the Municipal Council of Eldoret thereby misrepresenting to the officials at the Uasin Gishu Lands Registry to issue her with a certificate of lease where none should have issued.*

The plaintiff has thus sought orders to have the title of the defendant revoked and an order directing the District Land Registrar to issue a proper title to the plaintiff over the suit land. He also wants an order of permanent injunction restraining the defendant from the suit land together with costs of the suit.

Despite being served with summons, the defendant did not enter appearance nor file a statement of defence. Neither did she appear at any of the hearing dates given although she was duly served with hearing notices.

The plaintiff testified and called two witnesses. In his evidence, the plaintiff testified that in the year 1986, the Municipal Council of Eldoret advertised some plots for sale within Kipkarren Estate, and being interested, he applied for one. He was then allotted a plot with a temporary number 47 and an allotment letter issued which he produced in evidence. He was required to pay Kshs. 1,000/= for the allocation which he duly paid. He then started paying rates for the plot which now bore the number Block 15/829. In the year 1989, he started constructing on the plot having been given a plan by the Town Engineer. He however ran short of funds and did not complete the building. In 2001, he went out of the country to the United States of America (USA) and came back in the year 2010. When he came back, the land was still intact. He went to the Municipal Council of Eldoret and cleared all outstanding rates, but when he applied to be issued with a title deed, his application was deferred without reason. Later he was referred to the Lands Offices, and when he went to conduct a search of the property, he found that the property registered in the name of the defendant. Surprised by these findings, he went back to the Municipal Council of Eldoret but they informed him that they are not aware of any lease issued to the defendant.

PW-2 was Kenneth Kibiwott Mutai, an advocate of the High Court of Kenya, currently engaged by the County Government of Uasin Gishu as the County Legal Officer. He carried with him the original file to the suit land. He testified that it is the plaintiff who was allotted the plot and issued with an allotment letter by the Municipal Council of Eldoret. He had no record of any lease issued to the defendant. He stated that it is a mystery how the defendant came to be issued with a lease over the suit land.

PW-3 was Dorothy Chepkulei Leting, the County Land Registrar, Uasin Gishu County. She testified that the title in issue is a lease from the Municipal Council of Eldoret with the Municipal Council of Eldoret as Lessor. She testified that according to their records, there is a lease issued to the defendant that was registered on 7 February 2011. She testified that it is the Municipal Council which used to prepare the leases and that it is therefore the Municipal Council which can state whether or not the lease in their records is authentic.

With the above evidence the plaintiff closed his case.

I have considered the pleadings and the evidence of the plaintiff which is not controverted. The suit land is a leasehold title with the lessor being the Municipal Council of Eldoret. With the Constitution of Kenya, 2010 Municipal Councils are now defunct and their functions have been taken over by County Governments. The County Government in issue is the County Government of Uasin Gishu. PW-2 an officer of the County Government, testified that according to their records, they only recognize the plaintiff as the allottee and proper lessee of the suit land. They have no record of having leased the property to the defendant.

The defendant has not filed any document and neither has she produced any evidence to demonstrate how she got title to the suit land and give reasons why her title ought not to be cancelled.

A title that is not issued legally is prone to cancellation. This is set out in Section 26 of the Land Registration Act, Act No. 3 of 2012, which provides as follows :-

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

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt

scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

Thus a title issued by way of fraud or misrepresentation of which the title holder is proved to be a party, or a title issued illegally, unprocedurally, or through a corrupt scheme is liable to be cancelled.

The defendant could not have obtained title unless by way of fraud or misrepresentation, that the Municipal Council of Eldoret had issued a lease to her which is not the case. Her title is an illegal title, that was also obtained unprocedurally, or probably through a corrupt scheme. It is not a good title and it is prone to cancellation. I therefore hereby cancel the lease issued purportedly issued to the defendant and further cancel the leasehold title of the defendant.

It was demonstrated through the evidence of PW-2 that it is the plaintiff who is the legitimate proprietor of the leasehold title comprised in the suit land. I therefore direct the County Government of Uasin Gishu to draw a lease in favour of the plaintiff and further direct the Land Registrar Uasin Gishu County to register such lease, and thereafter register the plaintiff as the lessee of the suit land, and issue the plaintiff with a Certificate of Lease.

The defendant shall bear the costs of this suit.

Judgment accordingly.

DATED AND DELIVERED AT ELDORET THIS 27TH DAY OF NOVEMBER 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET.

Delivered in the presence of: