



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 695 OF 2012

Formerly HCC 42 of 2011

DINAH JEPCHIENG CHEPYEGON.....1ST PLAINTIFF

RODAH CHEPTOO.....2ND PLAINTIFF

VS

KEVIN KIPTANUI KIMUWATAN.....DEFENDANT

JUDGMENT

The two plaintiffs in this suit have jointly sued the defendants seeking orders of permanent injunction to stop the defendants from interfering with the parcels of land known as Karuna/Karuna Block 1 (Chebonet)/49 and Karuna/Karuna Block 1 (Chebonet)/52. The two parcels of land are registered in the names of the first and second plaintiffs respectively.

In the plaint, it is pleaded that the plaintiffs purchased the two parcels of land from the 2nd defendant through agreements dated 4/5/2006 and 13/7/2007 respectively for valuable consideration. They then used the land peacefully until March 2012 when the defendants invaded their said parcels of land and commenced ploughing crops. It is pleaded that all efforts to stop the defendants from carrying out the acts of trespass have been fruitless. It is for this reason that the plaintiffs have asked for orders of permanent injunction to restrain the defendants from ever stepping or ploughing or in any other way dealing with the two parcels of land.

The defendants were duly served with summons but they did not enter appearance nor file defence. The matter was listed for hearing but despite being served with a hearing notice, the defendants did not attend at the hearing. The plaintiffs thereafter proceeded to give evidence in support of their case.

The 1st plaintiff, Dinah Jepchieng Chepyegon, testified that she bought the land parcel Karuna/Karuna Block 1 (Chebonet)/49 from the 2nd defendant for a sum of kshs. 4,400,000/= . The two went to the land control board where consent to transfer was issued. The land was then transferred into the name of the 1st plaintiff and the land is now registered in her name. The 1st plaintiff testified that she moved into the land in 2007 after obtaining title and she fenced it. However, the 1st defendant destroyed the fence and he and the other defendants forcefully proceeded to plough it. She was then forced to file this suit.

The 2nd plaintiff on her part testified that she purchased the land parcel Karuna/Karuna Block 1 (Chebonet)/52 from the 2nd defendant and the formalities for transfer were done. The land was then transferred to the 2nd defendant and she has title to the land. She intended to plough the same but was prevented by the defendants. She and the 1st plaintiff hence opted to file suit.

As I stated earlier, the defendants never filed appearance nor defence. The plaintiffs' suit is therefore uncontested. The evidence of the plaintiffs is also uncontroverted. The plaintiffs bought the suit lands and obtained title to the same. They are now the registered owners. By dint of being owners, they are vested with proprietary rights including the right of exclusive possession. These rights are set 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.

The defendants have not demonstrated any competing right that would entitle them to utilize the suit lands. In the circumstances I have no doubt that the plaintiffs are entitled to the prayers sought in the plaint.

I allow this suit and issue an order of permanent injunction preventing the defendants from interfering with the plaintiffs' use, possession and/or occupation of the land parcels Karuna/Karuna Block 1 (Chebonet)/49 and 52.

I also grant the plaintiffs the costs of this suit.

DATED, SIGNED AND DELIVERED THIS 3RD DAY OF JULY 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

A.T. Kiboi present for the Plaintiffs

N/A for the defendants who never entered appearance to the suit.