



**REPUBLIC OF KENYA**

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

**E&L 267 OF 2012**

**Formerly HCC 90 of 2006**

**JOSEPHINE CHEPKURGAT RUTO & ANOTHER.....PLAINTIFF**

**VS**

**WILLIAM K. MELI.....DEFENDANT**

***(Suit by plaintiffs for vacant possession permanent injunction and mesne profits; No defense filed; matter uncontested; deceased being registered owner of suit land; plaintiffs holding letters of administration; suit succeeds with costs; award of damages for trespass granted in lieu of an award for mesne profits).***

**JUDGMENT**

This suit was instituted by way of plaint filed on 31 July 2006. The suit was filed by Josphine Chepkurgat Ruto and Nehemiah Kiplagat Bett as joint administrators of the Estate of Fredrick Kibet Ruto (deceased). In the plaint, they pleaded that the deceased was the registered proprietor of the land parcel Pioneer/Ngeria Block 1 (EATEC)/106 measuring 5.54 Hectares. It was pleaded that the deceased bought the suit land in April 2003 from Lonrho Agribusiness (E.A) Limited at a consideration and a title deed was issued to him. About the same year 2003, the defendant encroached into the said land, fenced the whole of it, and moved in. The plaintiffs therefore filed this suit for orders to have the defendant give up vacant possession of the land, mesne profits from 2003 , and a permanent injunction to restrain the defendant from any further interference with the suit land.

The defendant was served with summons but did not enter appearance. Neither did he file any defence to the plaintiffs' suit. When the matter came up for directions, I gave a hearing date for 7th November 2013, and directed the defendant to be served with a hearing notice. He was duly served but did not appear in court on 7th November. Having been satisfied that the defendant had been served, I allowed the plaintiffs to proceed with the matter.

The 2nd plaintiff gave evidence in support of the case. It emerged in the course of his evidence that the 1st plaintiff, his mother and wife to the deceased, died on 10th March 2008. He is therefore the sole surviving plaintiff. He testified that his father died on 7 October 2003 after purchasing the suit land. After the demise of his father, he and his mother took out letters of administration in respect of his estate. Part of the estate is the suit land, which the 2nd plaintiff testified was purchased from Lonrho Agribusiness Ltd. He produced payment receipts paid to Lonrho for the land. He also produced land board consents

giving Lonrho Ltd consent to transfer the suit land to the deceased. A transfer was eventually effected and title issued. The 2nd plaintiff produced both the transfer instrument and the title deed to the suit land. I have seen from the title deed that the deceased Fredrick Kibet Ruto, became registered as sole proprietor of the suit land on 18th July 2003. There are no encumbrances registered in the title. The witness stated that trouble started after the demise of his father, when the defendant moved into the suit land. They confronted him, but the defendant refused to budge, and claimed that the suit land belonged to him. He is still on the suit land. It is for this reason that the plaintiffs filed suit and sought the prayers that I had elaborated earlier.

I have evaluated the pleadings and the evidence. There is no doubt that the suit land is registered in the name of Fredrick Kibet Ruto ( deceased). The plaintiff holds a grant of letters of administration on behalf of his estate and therefore has capacity to bring this suit. The defendant has not filed a defence nor counterclaim to demonstrate that he has a legitimate right over the land. From the evidence before me, the suit land belongs to the estate of Fredrick Kibet Ruto which estate is now vested upon the 2nd plaintiff.

The rights of a proprietor are set out in Section 25 of the Land Registration Act, Act No. 3 of 2012 which provides 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 stated earlier, the defendant has not demonstrated that he has any right over the suit land. In the premises, the 2nd plaintiff is perfectly entitled to have the defendant evicted from the suit land. He is also entitled to a permanent injunction to have the defendant permanently restrained by himself or his servants/agents from the suit land. No evidence was led to support the claim for mesne profits. However, I do take note that the defendant has been on the suit land since the year 2003 without any colour of right. The land is about 13 acres. In lieu of an order for mesne profits, since no evidence was led to prove the claim, in my own discretion, I will award the plaintiff a sum of Kshs. 200,000/= as general damages for trespass, for the defendant must bear some consequences for his illegal occupation of the suit land. I also award costs and interest at court rates from the date of this judgment.

On the whole, I make the following final orders.

*1. The defendant shall vacate the land parcel Pioneer/Ngeria Block 1 (EATEC)/106 forthwith and no later than 7 days from today and if he so fails to vacate, the plaintiff to apply for his eviction.*

*2. The defendant and his servants/agents is hereby permanently restrained from entering, being upon, occupying, utilizing, or in any other way interfere with the land parcel Pioneer/ Ngeria Block 1 (EATEC)/106.*

*3. In lieu of an order for mesne profits, I award the plaintiff, against the defendant, a sum of Kshs. 200,000/= as general damages for trespass, which sum shall accrue interest at court rates from the date hereof until settlement in full.*

*4. The plaintiff shall have the costs of this suit.*

It is so ordered.

**DATED, SIGNED AND DELIVERED THIS 21ST DAY OF NOVEMBER 2013**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

*Read in open Court*

*In the Presence of:-*

*Ms. G.M. Gacau present for the plaintiffs*

*Defendant Absent*