



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 553 OF 2012

Formerly HCC 152 OF 2009

PHILIP KIBIRECH NG'ETICH.....PLAINTIFF

VS

PETER OWICH MANGULA & OTHERS.....DEFENDANT

(Suit by plaintiff for orders of eviction, permanent injunction and mesne profits; plaintiff registered owner of suit land; no defense filed by defendants; defendants failing to attend at the hearing; suit succeeds with costs).

JUDGMENT

The plaintiff has sued the 17 defendants seeking orders to have them evicted from the land parcel registered as L.R No. 12161/17 North of Muhoroni Township Nandi District (the suit land) and for an order of permanent injunction to restrain them from any further interference with the said land. He has also sought mesne profits, costs and interest. In his plaint, the plaintiff has pleaded that he is the registered owner of the suit land but that sometimes in the month of July 2009, the defendants without any colour of right, trespassed into the said land and erected structures with an intention to permanently occupy the suit land. It is for this reason that he has sought the orders of eviction and permanent injunction.

The defendants entered appearance through the law firm of M/s Ken Omollo & Co Advocates on 13 October 2009 but later changed advocates to M/s Z.K. Yego Law Offices. The said firm however applied for an order to cease acting for the defendants which order was duly granted. The defendants are therefore acting in person. No defence was ever filed on their behalf.

I gave a date for hearing and ordered the defendants to be served. The defendants were duly served but they did not appear at the hearing of the suit. At the hearing of the matter, the plaintiff gave evidence as the sole witness. He testified that he purchased the suit land from Lands Limited and the title was duly transferred to him. He produced the transfer and the certificate of title as exhibits. The latter shows that the plaintiff is the sole proprietor of the suit land holding a lease for 950 years from 1st November 1996. The plaintiff testified that the defendants entered the suit land sometimes in April 2009. He reported the matter to the District Officer in July of the same year. The District Officer wrote to the defendants to move out through a letter dated 9th July 2009 but this was ignored. The plaintiff then opted to file suit.

The pleadings and evidence of the plaintiff are uncontested. There is no doubt that the plaintiff is the proprietor of the suit land. The defendants have not demonstrated to this court that they have any right to be on the suit land. Their continued occupation is therefore illegal. As proprietor, the plaintiff is entitled to enjoy the property free from interference by the defendants. The rights of the plaintiff 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 defendants have not demonstrated that they have any right over the suit land. In the premises, the plaintiff is perfectly entitled to the prayers of eviction and permanent injunction. No evidence was led, however, to support the claim for mesne profits, and in absence thereof, I am unable to make any assessment of what loss the plaintiff has suffered. I however appreciate that the defendants have been on the land illegally and in my own discretion, I award the plaintiff a token Kshs.10,000/= as general damages for trespass against each defendant in appreciation of the fact that the defendants have trespassed into his land and have therefore caused the plaintiff hardship.

This suit must and does succeed and I issue the following final orders :-

(1) The defendants must vacate the suit land within 14 days of service of this judgment or decree and in default the plaintiff be at liberty to apply for an order of eviction.

(2) An order of permanent injunction is hereby issued restraining the defendants, their employees and/or assigns from entering, being upon, utilizing or in any other way disturbing the plaintiff's quiet possession of the suit land.

(3) Each defendant shall pay to the plaintiff a sum of Kshs. 10,000/= as damages for trespass.

(4) The plaintiff shall have the costs of this suit.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF NOVEMBER 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open court

In the presence of:-

Mr. E.O. Miyienda holding brief for Mr. E.M. Orina for the Plaintiff

Defendants acting in person - absent