



**Kuronoi v Kondonyo (Environment & Land Case 515 of 2017)
[2023] KEELC 16685 (KLR) (22 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16685 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 515 OF 2017
MN KULLOW, J
MARCH 22, 2023**

BETWEEN

DAVID RAKOI KURONOI PLAINTIFF

AND

MOROSUA OLE KONDONYO DEFENDANT

JUDGMENT

1. The plaintiff commenced this suit by way of a plaint dated February 9, 2009; seeking the following orders: -
 - i. Declaration that land parcel No. Suswa Kitet Group Ranch 778 was properly and legally allocated to the Plaintiff and therefore belongs to the Plaintiff.
 - ii. Spent.
 - iii. An Order of Eviction against the Defendant from the suit land.
 - iv. General damages.
 - v. Costs of this suit and interest thereof at Court rates.

Plaintiff's Case

2. The plaintiff avers that he was allocated Land Parcel No. Suswa Kitet Group Ranch No. 778 measuring 30 Acres by virtue of being a member of the said Group Ranch. That the said land was allocated to him in accordance with the minutes dated 3/10/2000 by the Land Demarcation Committee as required by the Narok District Lands & Settlement Office. Further, he was issued with a Beacon Certificate; defining the beacon boundaries and the plot number allocated and thus certified that he had acquired ownership of the land thereof. He thereafter took immediate possession and started utilising the same for farming and grazing.



3. It is his claim that sometimes around December 2000; the defendant wrongfully and without any color of right, unlawfully entered the suit land, erected a temporary structure and started living thereon with his wife. That despite several attempts to vacate the defendant from the suit land with the assistance from several government officers, he has refused to vacate the land and/or move to his rightfully land parcel No. 684 measuring 30Acres which was equally allocated to him by the Suswa Kitet Group Ranch by virtue of being a member of the Ranch.
4. He further claims that the defendant did not object, lodge any complaint nor appealed against the allocation of the suit land in his name either to the Groups Land Allocation Committee, the District Land Officer or before the District Land Adjudication and Settlement Officer. Consequently, the defendant's acts of invasion have prevented him from using and developing his property and he is therefore bound to suffer irreparable loss and damages.
5. He averred that despite the suit land area having been adjudicated upon; at the time of filing the suit, the Register was pending to be opened in respect of the various parcels within the area and hence he sought and obtained the required consent to sue the defendant from the District Land Adjudication and Settlement Office.
6. Further, he stated that he failed to plant his maize and wheat crops by reason of the defendant's meddling and interference with the suit land which prevented him from utilization or developing the land. As a result, he contends that he has suffered loss and damages and urged the court to grant his prayer of general damages in compensation of the proceeds that he could have earned from the said crops.
7. In conclusion, he urged the court to find that the defendant has no right to occupy the suit land or to prevent him from utilizing or developing his land or interfering with his right of ownership of the said land and to subsequently issue an order for eviction of the defendant from the suit land.
8. The matter proceeded for hearing of the plaintiff's case on 30/10/2018; the Plaintiff testified as PW1 and called 2 witnesses in support of his case. He adopted his witness statement dated 20/12/2013 as his testimony and evidence in chief. It was further his testimony that he was allocated the suit land No. 778 by the Group Ranch Committee upon payment of the Kshs. 6200/= and was thereafter issued with an original Beacon Certificate.
9. He further stated that he obtained a letter from the Secretary of the Group Ranch dated 14/3/2005, which confirmed that the suit land Plot No. 778 was allocated to him while the Defendant was allocated Plot No. 684. He urged the court to allow the suit and grant the prayers sought.
10. He produced the following documents as exhibits in further support of his case; Official Receipt as Pexh 1, Beacon Certificate as Pexh 2, Letter dated 24/9/2002 as Pexh 3, Consent from DLASO dated 11/3/2008 as Pexh 4, Letter dated 14/3/2008 as Pexh 5, Letter signed by the Secretary of the Group Ranch and dated 14/3/2005 as Pexh 6.
11. On cross- examination he confirmed that the defendant was also a member of the Ranch and that he was allocated Plot No. 684, though he conceded to not having the minutes of 3/10/2000 which allocated the defendant the said Plot as alleged. He further stated that prior to being allocated the said parcel of land he was living on his father's property but has subsequently been cultivating the suit land. He maintained that the allocation of the suit land to him was signed by the Chairman, Treasurer and the Secretary of the Group Ranch.
12. Tenga Ole Parne testified as PW2, he adopted his witness statement dated 28/2/2013 as part of his testimony in chief. He further stated that Suswa Kitet Group Ranch had a membership of 3550



members and confirmed that both the plaintiff and the Defendant were members. The Group Ranch had a Committee of 10 members and he was one of the committee members; whose work was to subdivide, oversee the demarcation and to allocate the land between the members of the Ranch. Surveyors were tasked to conduct the demarcation and subdivision exercise and after the conclusion of the exercise each member of the Group Ranch was allocated 30 Acres.

13. He further stated that upon allocation, each member was given a Beacon Certificate and when shown Pexh. 2, he confirmed that the Pexh. 2 was the Certificate issued by the Ranch. He also confirmed that the plaintiff was allocated parcel NO. 778 while the defendant was allocated parcel No. 684. That even though the committee attempted to resolve the dispute between the parties by ordering the Defendant to vacate the suit land, the defendant refused to do so hence the instant suit.
14. On cross- examination, he reiterated that he was part of the Committee of the Group Ranch that allocated the parcels of the Ranch and that the Defendant was given Plot No. 684. He further stated that at the time of allocation of the respective parcels; No. 778 and 684, no one was in occupation thereof.
15. Patrick Turanta Torris testified as PW3, he adopted his witness statement as his testimony in chief. He further stated that he has been the Group Ranch Secretary since the year 1994 when he was appointed and is the custodian of all the group records and register. He confirmed that both the plaintiff and the defendant were members of the Ranch. Demarcation was done by the surveyors and all the members were allocated land in accordance with the Register and upon payment of the requisite survey fees; he confirmed that Pexh 1 was the official receipt issued by the Group Ranch. Upon payment of survey fees, members were thereafter issued with Beacon Certificates; he verified that Pexh 2 was the document issued by the Group Ranch and it indicated that the Plaintiff was allocated parcel No. 778. He stated that the parcel was allocated as per the register which showed the parcel numbers allocated to each member. He produced the Register of the Group Ranch as Pexh 7.
16. It was also his testimony that the defendant was allocated Plot No. 684 but he refused to settle on the same and insisted on occupying the plaintiff's land. He maintained that the Plaintiff was the bonafide owner of the suit land.
17. On cross-examination; he reiterated that he is a member of the land allocation committee. He maintained that the Defendant was allocated plot No. 684 but he instead moved to the Plaintiff's land. He also clarified that Plot No. 779 as per the register was allocated Rakoi Kuronoi, who is the Plaintiff's father and are both members of the Group Ranch.
18. He further confirmed that he wrote the letter dated 14/3/2008 in his capacity the secretary of the Group Ranch and the same was written after a decision was reached by the members of the Committee. The plaintiff thereafter closed his case.

Defendant's Case

19. The defendant filed a Statement of Defence dated 24/10/2012, wherein he denied all the allegations levelled against him by the Plaintiff. He further dismissed the Plaintiff's claim as being statutorily time barred since he has been in possession, occupation and use of the suit land since 1991, over 21 years ago. That as at 09/02/2009 when the suit was instituted, the cause of action had expired in 2003. He thus maintained that the suit was incompetent, misconceived and incurably defective.
20. He denied the claims by the Plaintiff that he was allocated the suit land No. 778 on 11/10/2000 or that he was issued with the Beacon Certificate No. 615 and averred that the plaintiff was allocated Parcel No. 779 instead.



21. On the plaintiff's allegation that he took immediate possession of the suit land upon being allocated the same; he stated that at all material times the plaintiff has been and continues to live in Gilgil in Nakuru District, which is approx. 150km from Nakuru District.
22. It is his claim that on or about 20/09/1997; upon paying the requisite survey charges, he was allocated the suit land Plot No. 778 by the Group Ranch Representatives in accordance with the provisions of the Land (Group Representatives) Act. That he has been in possession, occupation and use of the suit land since 1991 together with his family.
23. He further contends that in addition to residing on the suit land with his family, he has been practising subsistence farming and further uses the same to graze his livestock. In conclusion, he urged the court to dismiss the Plaintiff's suit with costs.
24. The Defence case proceeded for hearing on 26/2/2019. The defendant testified as DW1, he adopted his witness statement filed on 20/10/2012 as part of his testimony in chief. He reiterated that he was allocated the suit land No. 778 by the Group Ranch Committee, upon payment of the requisite fees and has been occupying and using the same with his family.
25. He further stated that he reported the dispute between him and the Plaintiff to the Ranch Committee and the local chief, who both resolved that the suit land belonged to him and issued him with a letter to that effect. He urged the court to dismiss the Plaintiff's case and to further order him to stop interfering with his occupation thereof.
26. He produced the documents in his List of Documents filed on 20/10/2012 as exhibits in further support of his case marked as Dexh. 1 – 4 as follows; survey receipt no. 1313 dated 25/9/1997 as Dexh 1, letter dated 9/4/2011 as Dexh 2, letter dated 7/11/2011 as Dexh 3 and sample photographs as Dexh 4.
27. On cross-examination, he maintained that he owns the suit land Plot No. 778; upon payment of the survey fees he was issued with a receipt and later issued with Beacon Certificate, which he conceded to not having produced as part of his exhibits. He denied being allocated plot No. 684 and stated that he has never occupied the said parcel.
28. It was also his testimony that he was issued with the letter dated 9/4/2011 by the Vice Chairman of the Group Ranch even though the same was not copied to him and was written after the suit was instituted and was pending in court.
29. Marano Ole Kodonyo testified as DW2, he adopted his witness statement dated 24/10/2012 as part of his testimony in chief. It was his claim that the Defendant is the owner of the suit parcel No. 778 and occupies the same. He maintained that the Plaintiff is the owner of Plot No. 779.
30. On cross-examination he stated that he owns plot No. 777 though he was not issued with a Beacon Certificate thereof. He reiterated that his brother DW1, has been living/occupying and using the suit land with his family. He denied the Defendant having been allocated a different parcel of land.
31. Lemaasek Merriape Seno testified as DW3, he adopted his witness statement dated 18/12/2013 as his testimony in chief. He stated that he was a Representative of the Group Ranch and that his role as a Committee member involved the subdivision of the land among the members of the Ranch. The land was subdivided and each member was allocated 30 Acres upon payment of the requisite survey fees.
32. He further stated that each person was allocated the land where they lived prior to the subdivision and allocation; that the defendant who was living on parcel No. 778 was allocated the same whereas the plaintiff was allocated parcel No. 779. That upon payment of the survey fees, each member was issued with a Beacon Certificate.



33. On cross-examination he reiterated that each member was issued with a Beacon Certificate including the Defendant and further that the Plaintiff was allocated Plot No. 779. He however denied knowledge that the Defendant was allocated plot No. 684.
34. It was also his testimony that there was a Beacon Certificate that was erroneously issued to the Plaintiff and further that the official records did not show that the Plaintiff was allocated Plot No. 778.
35. Chief Nicholas Ole Nkuku testified as DW4, he adopted his witness statement filed on 26/10/2012 as his testimony in chief. It was further his testimony that the defendant has been residing on the suit land for over 30 years and that the plaintiff occupies the land opposite the suit land.
36. On cross-examination, he confirmed having written the letter dated 9/3/2008, wherein after investigation he wrote the letter confirming that the suit land belonged to the Plaintiff and advised the Defendant to vacate the suit land and move to the plot that he was shown. He confirmed having relied on the beacon certificate availed by the Committee members, which showed that the owner of the suit land was the plaintiff, at the time of writing the said letter. The Defence thereafter closed his case.
37. Upon close of the Defence case, I directed the parties to file their written submissions to be exchanged within 30 days. Both parties filed their rival submissions which I have read and taken in to account in arriving at my decision.

Analysis and Determination

38. Having reviewed the pleadings, the evidence adduced by each party in support of their claims and the rival submissions, the main issue that arises for determination is: -
 - a. Whether the plaintiff is entitled to the reliefs sought in the plaint dated 9/2/2009.
39. The plaintiff herein has sought the declaration that he is the absolute owner of the suit parcel No. Suswa Kitet Group Ranch No. 778; the land having been allocated to him by the Group Ranch by virtue of being a member of the Suswa Kitet Group Ranch. It is his claim that having been rightfully allocated the suit parcel, he is the absolute owner thereof and therefore the defendant has no right nor basis to occupy the land. That despite various efforts to vacate the defendant from the said land, he has ignored and refused to vacate the land thus occasioning him irreparable loss as a result.
40. The defendant on the other hand maintained that he is the rightful owner of the suit parcel No. 778, the same having been procedurally allocated to him by the Group Ranch and has been occupying and utilizing the same for subsistence farming since 1991. It was his case that the plaintiff has never owned nor occupied the suit land and was allocated Plot No. 779.
41. The Parties' membership of the Suswa Kitet Group Ranch is not in question, both the plaintiff and the defendant are members of the Group Ranch. What however appears to be in dispute is the ownership of the suit land Suswa Kitet Group Ranch No. 778. The plaintiff contends that he was rightfully allocated plot No. 778 while the Defendant was allocated plot No. 684. The Defendant on the other hand contends that he was rightfully allocated plot No. 778 while the Plaintiff was allocated plot No. 779. Each party called witnesses and adduced evidence in support of their rival claims.
42. In determining the ownership claims at the center of the dispute herein, it is important to look at the process of the subdivision and allocation of land and the various documents issued upon allocation that conferred ownership. PW2, PW3 and DW3 were all Suswa Kitet Group Ranch Committee members. It is their testimony that the committee members were involved in the subdivision process and were tasked with overseeing the demarcation, subdivision and allocation of land among the members of the Ranch. They all confirmed that each member was required to pay the requisite Survey Fees upon



which they would be issued with the Group Ranch Official Receipt. After payment of the survey fees, a member would then be issued with an Original Beacon Certificate in respect to the portion allocated to each one. The Beacon Certificate contained the name of the owner and the plot number allocated and was signed by the Chairman, Secretary and the Treasurer of the Group Ranch. It therefore follows that the beacon certificate reflected the actual position as to the owner of each portion.

43. Onguto J. in the case of *Danson Kimani Gacina & another v Embakasi Ranching Company Ltd* [2014] eKLR while addressing the issue of ownership of land within the Group Ranch held as follows: -

“The law on unregistered land, unlike on registered land, is slightly unclear. Proof of ownership in the case of the former is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered then the holder of the documents is entitled to the protection of the law. There is no doubt that such proof will be on a balance of probabilities but the court must be left in no doubt that the holder of the documents proved is the one entitled to the property.” (emphasis mine)

44. The Plaintiff produced Pexh. 1, Pexh. 2, Pexh. 3 and Pexh 6 among others in support of his claim. Pexh 1 is a copy of the receipt to prove payment of the requisite Survey Fees as a requirement by the Group Ranch. Both PW2 and PW3 confirmed and verified that Pexh 1 was the official receipt issued by the Group upon payment of the requisite survey fees.
45. He also produced Pexh 2, the Original Beacon Certificate and which clearly showed that he was allocated plot No. 778. Again, the same was verified and confirmed to be the original Certificate issued by the Group Ranch by PW2 and PW3.
46. PExhibits 3 and 6 were copies of letter diversely dated and written by the Secretary of the Group Ranch, who also testified as PW3 and whose effect was to confirm that the suit Plot No. 778 was owned by the Plaintiff herein.
47. PW3, who testified as the Secretary of the Suswa Kitet Group Ranch stated that he was the custodian of all group records and register. He produced Pexh. 7, a copy of the Suswa Kitet Group Ranch register. From a cursory look at the same, it clearly shows the various members of the group, their Identification numbers and the Plot No. allocated to each of them. At No. 778 is the name of the Plaintiff and the plot number allocated is No. 778. Plot No. 779 was allocated to one Rakoi Kuronoi, who is the Plaintiff's father. The same thus confirms the correctness of the assertion made by the Plaintiff. Plot No. 684 was allocated to Ntutuk Ole Konko Tinkoi as a reallocation as evidenced by Pexh 6.
48. The Defendant on the other hand produced a copy of the receipt as Dexh. 1, which confirmed payment of the requisite Survey fees. He however conceded that he did not produce a copy of the Beacon Certificate to prove that he was indeed allocated plot No. 778 as alleged. It is my considered view that Dexh. 1 is merely proof of payment of the survey fees and does not actually reflect the Plot Number in respect of which the survey fees was paid. This cannot be used as proof of ownership of the suit plot.
49. DW1 also produced a copy of a letter dated 9/4/2011 as Dexh. 2 in support of his claims. I have carefully looked at the same and I note that the same written after the institution of the suit herein and the contents thereon appear to be inconsistent with the practice and/or procedure at the time of the demarcation and subdivision exercise. Further, neither the maker of the said document nor the committee members listed thereon appeared in court to testify and corroborate the contents of the said letter.



50. I have also noted that DW3 in his testimony stated that the Group's official records did not show that the Plaintiff was allocated Plot No. 778. This court however notes that he neither challenged Pexh. 7 nor adduced any contrary register or evidence thereof which showed that the defendant was the owner of the suit plot No. 778.
51. It is trite law that he who alleges must prove. While the plaintiff produced the Beacon Certificate to support his ownership claims, the defendant did not adduce any evidence which clearly and outrightly indicated that he was allocated the suit plot No. 778. The chain of documents produced by the Plaintiff as exhibits, are unbroken and shows that he is the true owner of the suit parcel No. Suswa Kitet Group Ranch No. 778 and he is therefore entitled to the protection of the law.
52. The totality of the foregoing is that the plaintiff has proved his claim on a balance of probability to warrant the grant of the orders sought. However, on the prayer for general damages; I find that the Plaintiff has not sufficiently proved the measure of such general damages that he is entitled to. This court is therefore unable to assess the general damages and I will not award the same.

Costs

53. Costs generally follow the event, and in this instant case, having held that the plaintiff has proved his case to the required standard, I find that it is entitled to costs of the suit.

Conclusion

54. The upshot of the above is that the plaintiff has proved his case to the required threshold and I accordingly enter judgement for the plaintiff against the defendant on the following terms: -
- i. A Declaration is hereby made that land parcel No. Suswa Kitet Group Ranch 778 was properly and legally allocated to the Plaintiff and therefore belongs to the Plaintiff.
 - ii. The Defendant is hereby ordered to vacate the suit land within 90 days from the date of this Judgment failure to which an order of Eviction be issued against the defendant. Any Eviction thereof must strictly comply with the mandatory provisions of section 152E of the [Land Act](#).
 - iii. Costs of the suit to be borne by the defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MIGORI ON 22ND DAY OF MARCH, 2023.

MOHAMMED KULLOW

JUDGE

In presence of; -

Nonappearance for the Plaintiff

Mr. Solonka for the Defendant

