



**Ruto & another v Latema (Environment & Land Case 05 of 2017)
[2023] KEELC 16993 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 16993 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 05 OF 2017**

EO OBAGA, J

APRIL 27, 2023

BETWEEN

JOSEPH KIPKERICH RUTO 1ST PLAINTIFF

THOMAS CHEBII ROTICH 2ND PLAINTIFF

AND

RAPHAEL KOSKEI LATEMA DEFENDANT

JUDGMENT

1. The Plaintiffs filed an originating summons against the Defendant in which they sought eviction orders against the Defendant from LR. Nos. Moiben/Kapsubere 2 (Simotwo Mosop)/127 and 128 (suit properties).
2. The Plaintiffs were members of Mosop farm and had been allocated the suit properties but their names were removed from the register in unclear circumstances after which the Defendant had himself registered as owner of the suit properties.
3. The Plaintiffs went before Moiben Land Disputes Tribunal where they filed a claim against the Defendant. The Tribunal found that the suit properties belonged to the Plaintiff's. The Tribunal verdict was filed before Eldoret Chief magistrates court in Award No. 37 of 2002. The award was adopted as judgement of the court.
4. The Plaintiffs moved the court for orders that the Executive officer of the court do sign the necessary transfer documents to enable the suit properties to be registered in the Plaintiffs' names. The order was granted on 4/3/2003. The order was given to the Land Registrar who published notices in the Gazette Notice requiring the Defendant to surrender the original titles in respect of the suit properties for cancellation. The Defendant was given 30 days to do so failing which the Land Registrar was to issue fresh titles in favour of the Plaintiffs.



5. The Defendant did not comply with the Gazete Notice. The Land Registrar proceeded to issue titles in favour of the Plaintiffs on 23/9/2003. It is after titles were given in favour of the Plaintiffs that they moved to court and filed this suit on 12/11/2004 seeking eviction orders against the Defendant.
6. During the hearing the 2nd Plaintiff testified that after the Tribunal verdict and after being given title, he moved into one of the suit properties that is Moiben/Kapsubere (Simotwo Mosop) 128 in 2004 and started to cultivate it. He planted maize which he later harvested. The Defendant came and chased him away. The Defendant proceeded to build a house on his land and he has refused to vacate.
7. The 2nd Plaintiff produced a copy of title as exhibit 1 and the court order as exhibit 2 as well as copy of Gazette Notice No 5789 of 22/8/2003 as exhibit 3. It is on this basis that he prays for eviction orders as prayed for in the originating summons.
8. In his defence, the Defendant stated that he owns Moiben /Kapsubere (Simotwo Mosop/126. He went on to state that he purchased the suit properties jointly with his father Latema Aramat but that he was the one who paid the purchase price. He stated that his father later on gave him authority to take the two suit properties. He proceeded to process titles in his name. He stated that they purchased the suit properties in 1969.
9. The Plaintiffs started laying claim to the suit properties. He went and complained to the Kenya Human Rights Commission and the Ethics and Anti-Corruption Commission. The officers from the Ethics and Anti – Corruption Commission went to the suit property where they told the Plaintiffs that he is the one who was the owner of the suit properties.
10. The parties were directed to file written submissions. The Plaintiffs filed submissions on 28/2/2023. The Defendant did not file any submissions and if any were filed, then they are not in the court file as at the time of writing this judgment on 9/4/2023.
11. I have carefully considered the evidence adduced by the 2nd Plaintiff and that of the Defendant. The 1st Plaintiff did not testify in this case and there was no reason given why he did not do so. Perhaps he may have taken possession and saw no need of pursuing the case. I say so because the Defendant stated that the Plaintiffs took possession forcefully.
12. The only issue for determination is whether the 2nd Plaintiff has made out a case for issuance of eviction orders against the Defendant. The evidence which was adduced is that the 2nd Plaintiff was before a Tribunal which ordered that one of the suit properties specifically Moiben/Kapsubere (Simotwo Mosop/128 belonged to him. This verdict was adopted as order of the court and title was given in favour of him. This is after the title held by the Defendant was cancelled by the Land Registrar.
13. The 2nd Plaintiff produced title in his name. The Defendant who claimed that he purchased land together with his father never produced the said agreement or evidence of the same. The Defendant conceded that the Land Disputes Tribunal passed a verdict and was aware about it though he did not agree with it. He stated that though he has not challenged the verdict, the window was still open and he may challenge it any time.
14. The Plaintiffs obtained titles through a legal process which has never been challenged. What the Defendant has is just a paper title which has been overtaken by the new title which was issued to the 2nd Plaintiff. This being the case, there is no basis upon which the Defendant should remain on the 2nd Plaintiff's land. I find that the 2nd Plaintiff has proved his case against the Defendant on a balance of probabilities.



15. Consequently, I enter judgement in favour of the 2nd Defendant. An order of eviction is hereby given against the Defendant ordering him to vacate LR. No. /Kapsubere (Simotwo Mosop/128. The Defendant shall pay costs of this suit to the 2nd Plaintiff.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 27TH DAY OF APRIL, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Kambia for Plaintiff.

Court Assistant –Laban

E. O. OBAGA

JUDGE

27th APRIL, 2023

