



REPUBLIC OF KENYA



**Tokosho v Kindi & another (Environment & Land Case E010 of 2020)
[2023] KEELC 21866 (KLR) (27 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21866 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E010 OF 2020
MN GICHERU, J
NOVEMBER 27, 2023**

BETWEEN

LEULEU OLE TOKOSHO PLAINTIFF

AND

SERPEPI KINDI 1ST DEFENDANT

LEIYIOMET' KINDI 2ND DEFENDANT

JUDGMENT

1. The plaintiff seeks the following reliefs against the two defendants both jointly and severally.
 - a. A declaration that the defendants have violated the Plaintiff's right to property as stipulated in Article 40 of *the Constitution* of Kenya.
 - b. General damages for violation of the Plaintiff's right to property as enshrined in Article 40 of *the Constitution*.
 - c. A declaration that the defendants have trespassed into the Plaintiff's property known as Kajiado/Ewuaso-Kedong/2846, suit land.
 - d. General damages for trespass.
 - e. An order for a permanent injunction restraining the defendants either by themselves, their agents, employees, assigns or any other person acting under their instructions from alienating, occupying, encroaching, trespassing, constructing, laying claim or otherwise interfering with the plaintiff's parcel of land which is the suit land.
 - f. An order for eviction of the defendants from the suit land.
 - g. Costs of this suit.



2. The Plaintiff's case is as follows. He is the registered owner of the suit land which measures 12.77 hectares. He became registered in the year 2007. The plaintiff was in occupation of the land even before he became the registered owner. He has been farming on it and grazing his livestock thereon.
3. In the year 2019, the first defendant encroached onto the suit land. The trespass entailed the building of a house on the plaintiff's land. When the plaintiff protested the first defendant's actions, the latter relented the construction for a while but he later started again, this time by cutting down trees on the plaintiff's land.
4. The plaintiff reported the matter to the elders who listened to the dispute and ordered the defendant to cease his unlawful activities on the plaintiff's land. The defendant did not heed the elder's warning. He went on to complete the building that he had started on the plaintiff's land. In the year 2020, the second defendant deposited some building materials on the suit land. He also started some quarrying activities on the suit land. The plaintiff reported the matter to the elders. The second defendant said that he had bought the land from the first defendant and he would not stop what he was doing on the land. To date, the two defendants occupy the plaintiff's land and they have refused to vacate. This is what made the plaintiff file this suit.
5. Before filing this suit, the plaintiff engaged the services of John D. Obel, a licensed surveyor who visited the land and prepared a report dated 22/9/2020. In the report, the surveyor recommends that the proprietor of L.R. 1455 should seek the establishment of his boundaries so that it may be confirmed that the boundaries have been tampered with.
6. In support of his case, the plaintiff filed the following evidence.
 - i. Witness statements by himself and Lempol Ole Nkinti.
 - ii. Copy of title deed for the suit land.
 - iii. Copy of surveyor's report.
 - iv. Copy of minutes of an elders meeting.
 - v. Copies of demand letters.
 - vi. Copy of OB numbers
 - vii. Copy of official search for the suit land.
7. At the trial, the plaintiff and the surveyor testified by adopting the witness statement and the documents. The surveyor on examination by the court had this to say about the entire area where the suit land is situated.

“The maps for phase 1 are not correct. There should be a complete resurvey of the area. Each land owner should demarcate their land on the ground. The defendant's land should be in phase 1”.
8. The defendants though served with the pleadings and summons to enter appearance did not enter appearance or file a defence as required. The suit proceeded as undefended after the court made an order to that effect on 8/11/2022.
9. Counsel for the plaintiff filed written submissions dated 15/4/2023 in which he identified five (5) issues for determination.



10. I have carefully considered all the evidence adduced by the plaintiff and his witnesses in this case. It includes the witness statements, documents and the oral evidence at the trial. I find that though the Plaintiff's land may have been encroached upon by the defendant, this case involves a boundary dispute. All boundary disputes are to be resolved by the Land Registrar. This is in accordance with Section 18(2) of the *Land Registration Act* which provides as follows.

“The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section”.

There is no evidence that the dispute has been determined by the Land Registrar. There is evidence from the plaintiff's own surveyor that there is an overlap between phase 1 and 2 of the area in which the land is situated. The court does not have sufficient material or the requisite jurisdiction to deal with this dispute exhaustively. The admitted overlap between the two phases only serves to exacerbate the situation.

For the above stated reasons, I dismiss the plaintiff's suit with no order as to costs.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 27TH DAY OF NOVEMBER 2023.

M.N. GICHERU

JUDGE

