



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 106 OF 2012

KIRIGA GITHUBA..... 1ST PLAINTIFF

NJOROGE KINUTHIA..... 2ND PLAINTIFF

TERESIA GITHAE RUGU..... 3RD PLAINTIFF

AMON GIKONYO RUGU..... 4TH PLAINTIFF

BENSON GIKONYO RUGU..... 5TH PLAINTIFF

MARY NJOKI NGURU..... 6TH PLAINTIFF

DAVID NJOROGE NGURU..... 7TH PLAINTIFF

VERSUS

PATRICK WANYONYI..... DEFENDANT

J U D G M E N T

INTRODUCTION

1. The 3rd plaintiff is the Administrator of the Estate of the Late Charles Karanja Kinyanjui. The 4th and 5th plaintiffs are the Administrators of the Estate of the Late Peter Rugu Njoroge while the 6th and 7th plaintiffs are Administrators of the Estate of the Late Nguru Githuba. The first and second plaintiffs together with the Late Chalres Karanja Kinyanjui, Peter Rugu Njoroge, and Nguru Githuba are the registered proprietors of **L.R.No. 8812/1** (Commonly known as Umoja Farm) hereinafter referred to as **Umoja Farm**. Umoja Farm shares a boundary with L.R. No. 8812/2 (Commonly known as Matisi Farm) which farm has since been subdivided and each member of the farm has his or her own title. The defendant is the registered owner of **L.R.No. Kiminini/Kinyoro Block 3/Matisi/712** measuring about 0.441 hectares (approximately one acre).This parcel shares a common boundary with Umoja Farm.

2. The plaintiff brought a suit against the defendants claiming the following reliefs:-

(a) An order that the defendant do move out of 4.293 acres part of L.R.No. 8812/1 (Umoja Farm)

failing which the defendant, his family or any person claiming under him be forcefully evicted.

(b) A permanent injunction to restrain the defendant from ever again trespassing into L.R.No. 8812/1.

(c) Costs

(d) Interest

(e) Any other or further relief that this Honourable Court may deem fit to grant.

PLAINTIFFS CASE

3. The plaintiffs through John Njoroge Kinuthia the second plaintiff herein testified that they bought Umoja Farm which is more than 700 acres. The defendant is one of the members of Matisi Farm which has since been subdivided and the defendant's share in the farm is a plot known as L.R. No. Kiminini/Kinyoro Block 3/Matisi/712 which is one acre. The defendant encroached into Umoja Farm and constructed a house on the encroached land. They engaged the services of the County Surveyor who established the extent of the defendant's encroachment. The surveyor found out that the defendant had encroached on to Umoja Farm by 4.293 acres.

4. The plaintiffs then instructed their lawyer who wrote a demand letter to the defendant asking him to move out of the encroached area but the defendant has not moved out. PW2 Bainito Ombudu Hussein the County Surveyor testified that he was asked by the plaintiff's advocate to go to the ground and determine the common boundary between Umoja Farm and the defendant's parcel. He went to the ground and met the defendant who showed him the land he was occupying. After he established the boundary of Umoja Farm and the defendant's parcel, he found that the defendant had encroached on to Umoja Farm by 4.293 acres. The defendant had erected two semi permanent houses of corrugated iron sheets. He found out that the boundary of Umoja Farm and the defendant's parcel were separated by a small river.

DEFENDANT'S CASE

5. The defendant stated that he is contented with the one acre which he is having. In principle he agreed with the plaintiffs evidence and during cross examination he said that he is willing to move out of the land he has encroached on the Umoja Farm. He however pleaded with the court to take into account the wet land which is not part of the one acre and the fact that a sewer line passes through his land.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

6. In the defence filed by the defendant, he denied any encroachment on Umoja Farm. The only issue for determination in this case is whether the defendant has encroached on to Umoja Farm. There is the evidence of the surveyor which established that the defendant's land is one acre but that he was occupying 4.293 acres on Umoja Farm side. The defendant had gone beyond the river which marks the boundary between his land and Umoja Farm. The defendant conceded in his evidence that his land is one acre and that he is willing to confine himself to the one acre. I therefore find that the defendant had encroached on to Umoja Farm by 4.293 acres. The defendant's contention that there is a sewage which runs through his land and that it is the plaintiffs who sold the land for the sewer line has no basis. The defendant has conceded that his one acre spread from the upper part upto the river. There is evidence from the County Surveyor that the boundary separating the two parcels is a river. If the defendant is residing on Umoja Farm side where a sewer line passes through, then he should leave the area and confine himself to the other side of Matisi Farm where his one acre falls. The defendant pleaded to the court to take into account the wetland in determining his one acre. The defendant seems not to understand what the court has been called upon to determine. The court has been called upon to determine whether there was encroachment by the defendant or not. The court is not determining where the defendant's one acre should fall. Already the defendant's one acre is well documented on the ground. The one acre is on Matisi Farm which is different from Umoja Farm. The defendant is appearing in person and it is understandable that he may

not be conversant with the issues in question. However be that as it may, I find that the plaintiffs have proved their case against the defendant on a balance of probabilities. The defendant has clearly encroached on to Umoja Farm by 4.293 acres.

DETERMINATION

7. The defendant has been occupying more than five acres whereas he is entitled to one acre. He should not remain on the 4.293 acres of Umoja Farm. An order is hereby given that he moves out of the encroached area of L.R. No. 8812/1 failing which he should be evicted from the land after expiry of two months from the date of this judgment. A permanent injunction is hereby issued restraining the defendant from ever again trespassing on L.R.8812/1 upon moving out. The defendant shall pay costs of this suit to the plaintiffs.

Dated, signed and delivered at Kitale on this 28th day of May, 2015.

E. OBAGA

JUDGE

In the presence of Mr. Kiarie for Plaintiffs and Defendant's representative.

Court clerk – Isabellah.

E. OBAGA

JUDGE

28/5/2015