



Marist Brothers Kenya (Registered Trustees) v Nyariara & another (Environment & Land Case 816 of 2017) [2022] KEELC 15710 (KLR) (16 May 2022) (Judgment)

Neutral citation: [2022] KEELC 15710 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 816 OF 2017
MN GICHERU, J
MAY 16, 2022**

BETWEEN

MARIST BROTHERS KENYA (REGISTERED TRUSTEES) PLAINTIFF

AND

ANN NYARIARA 1ST DEFENDANT

NOAH MONERIA OLE KURRARU 2ND DEFENDANT

JUDGMENT

1. Marist Brothers Kenya (Registered Trustees), the plaintiffs, seek the following reliefs against Ann Nyariara, the first defendant and Noah Moneria Ole Kurraru, the second defendant;
 - a. An order for forceful eviction of the defendants together with their agents, servants employees or any other person purporting to act on the authority of the Defendants from the plaintiffs' land KJD/Loodariak/2235, suit land.
 - b. A permanent injunction against the defendants together with their agents, servants, employees, surrogates or any other person purporting to act on the authority of the defendants from trespassing, encroaching, intruding, crossing over or in any other manner dealing with the suit land
 - c. Costs of the suit.
 - d. Any other order this court may find fit and proper to grant under the circumstances.
2. The plaintiffs case is as follows; they are the registered proprietors of the suit land which measures approximately 40.5. hectares. They bought the land from Saleto Ene Nakalino and Mashoni Ene Nakariro for Kshs. 20,000,000/=. When they bought the land it was vacant.



However, in the year 2016, the first defendant invaded the land and started fencing it. Through their counsel on record, the plaintiffs reached out to the defendants through their agent. When they asked them to stop the trespass, they did not budge. Instead they continued fencing the land and developing it further by erecting permanent structures thereon.

Later on, the plaintiff engaged the first defendant who said she owns LR Kajiado/Ilkilsumet/738 and which she thought was the suit land. She requested the Plaintiffs for an exchange of the parcels but the plaintiffs were not agreeable hence this suit.

3. In support of their case, the plaintiffs filed the following evidence;
 - a. Witness statement by Joseph Udejah.
 - b. Witness statement by Christian Gizamonyo Nzaba- Mbarirwa.
 - c. Certificate of incorporation.
 - d. Copy of title deed for the suit land dated December 19, 2012.
 - e. Copy of certificate of official search dated July 14, 2017 showing the Plaintiffs as the proprietors of the suit land.
 - f. Copy of register (green card dated 3/3/2015).
 - g. Copy of mutation form.
 - h. Copy of demand letter dated 3/4/2017.
 - i. Copy of report by surveyor dated 7/6/2017 confirming the location of the suit land and the identification of the boundaries thereof.
 - j. Copy of certificate of official search dated March 3, 2015.
 - k. Copy of surveyor's certificate of registration dated 2/3/1994.
 - l. Certificate of land surveyor dated 3/2/1982.
 - m. Copy of certificate of licensed surveyor dated 30/3/1989.
 - n. Copy of annual practicing certificates dated 7/6/2017 and 19/2/2019.
4. The first defendant filed a written statement of defence dated May 28, 2019 through her counsel on record.

In the defence, the first defendant denies ever having trespassed on the plaintiffs' land. Her defence is to the effect that the land that she occupied and developed is known as Kajiado/Ilkisumet/738. She has sunk a borehole and fenced the entire parcel with chain link. Prior to the purchase and occupation, the land had been identified physically and pointed out to her by the second defendant who is the same person who sold the plaintiff his land. She called for dismissal of the plaintiffs suit averring that she has no interest in its property.

In support of her case, the first defendant filed the following;

- a. Her witness statement dated 11/11/2019.
- b. Copy of title deed for LR KJD/Keekonyokie/Ilkisumet/738 dated August 7, 2012.
- c. Copy of mutation of LR Kajiado/Ilkisumet/143 out of which her land mutated.



5. At the trial on 17/11/2021, only the plaintiff and his witness Gibson Wahome Werugia testified. Neither the defendant nor her advocate turned up even though he had been served with the hearing notice on May 10, 2021.

The plaintiff and his witness restated what was in their witness statements and produced their documents as exhibits.

6. I have carefully considered all the evidence adduced by both parties including the pleadings, statement and documents filed by the first Defendant even though she did not testify.

I have also considered the plaintiffs' written submissions dated February 10, 2022.

I find that there is only one issue to be decided in this case namely; whether the suit land and LR Kajiado/Ilkilsumet/738 are one and the same parcel or two distinct parcels in two different locations.

I find that the two land parcels are not one and the same but two different parcels in two different locations for two reasons.

Firstly, there is the evidence from the surveyor who was called by the plaintiff as a witness in this case and who said in his report that he identified the boundaries of the suit land by Global Positioning System (GPS). Not only is he a qualified surveyor but his evidence is uncontroverted. I believe that he accurately identified the precise boundaries of the suit land.

Secondly, there is on record the first defendant's letter to the plaintiffs dated June 8, 2018 admitting that she is on the wrong parcel and requesting for an exchange. In the letter, she also admits that the two parcels are distinct and separate.

The above mentioned letter is annexed to the affidavit by Joseph Udejah dated 27/8/2018 and filed on 28/8/2018.

7. For the above stated reasons, I find that the plaintiffs have proved their case against the defendants on a balance of probabilities. I enter judgment for the plaintiffs as prayed for in the plaint.

Order accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16TH DAY OF MAY, 2022.

M.N. GICHERU

JUDGE

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