



**Rioreta v Rengono (Environment & Land Case 70 of 2018)
[2022] KEELC 3786 (KLR) (26 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 3786 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 70 OF 2018**

**FO NYAGAKA, J
JULY 26, 2022**

BETWEEN

SOLOMON PEITUM RIORETA PLAINTIFF

AND

TOPEMUK RENGONO DEFENDANT

JUDGMENT

The Pleadings

1. The Plaintiff, who described himself as a male adult of sound mind, instituted the instant suit by way of a Plaint dated 25/07/2018 and filed on 26/07/2018. He sought the following reliefs:
 1. A permanent injunction to issue against the Defendant, his agents or anybody claiming through him using, occupying, constructing a house or any other manner dealing with land known as Plot No. 279 Kanyarkwat Group Ranch.
 2. A declaration that the Plaintiff is the sole owner of land known as Kanyarkwat Plot No. 279.
 3. Costs.
 4. Any other relief the Court may deem fit to grant.
2. The Defendant entered appearance on 28/11/2019, after service of summons. He filed his Statement of Defence dated 30/01/2020 on 31/01/2020. He denied the averments contained in the Plaint.

The Plaintiff's Case

3. The Plaintiff's case was that he was related to the Defendant. On 04/09/2014, a dispute ensued between himself and another over his late father's parcel of land. The dispute, on land demarcation, was determined by village elders and decided in favor of his late father over Plot No. 188. His father



resided over that parcel of land. He produced in evidence the village elders' demarcation document as P. Exhibit 1.

4. Following the award, the said Plot No. 188 was demarcated and subdivided into Plot Nos. 278 (given to his younger brothers) and 279 given to him. He described himself as the legitimate owner of all that parcel of land known as Plot No. 279, Kanyarkwat Group Ranch measuring approximately 8 acres. He had, however, never been in occupation of the said suit land. His ownership was confirmed by Kanyarkwat Group Ranch, County Commissioner, Ministry of Land and Settlement and the Land Adjudication and Settlement office.
5. Sometime in 2017, the Defendant, described as the chief of Kanyarkwat Location, and whom he called Rengono Todumuk Julius, took occupancy without the Plaintiff's permission following the departure of Loritai Rengono from the suit land. He only sought and was granted permission from the Plaintiff to temporarily use the suit land. Instead of using the same for planting maize, the Defendant unilaterally constructed a permanent house. However, on cross-examination, he pointed out that the Defendant entered into the land where there was an erected house but with no windows and started using it. He asked the Defendant to vacate the suit land. He testified that the Defendant had resided therein since 2005 for fourteen (14) years but also said he entered the land in 2017. He also resided on Plot No. 278. The Plaintiff remained aggrieved by the Defendant's actions or lack thereof hence this suit. He thus asked this Court to grant the reliefs sought in his Plaintiff.

The Defendant's Case

6. The Defendant testified that he was called Rengono Todumuk Julius. He stated that he had been the Area Chief of Kanyarkwat location since 15/12/2017. He produced his Identity Copy (I.D.) card copy, confirmed as original, marked D. Exhibit 1. His I.D. number was designated 26069226.
7. His testimony was that he was served under the mistaken belief that he was the Defendant. He denied being the Defendant or knowing him. He was neither related to the Plaintiff nor knew him. However, when cross-examined, he stated that his father and the Plaintiff's father had relations. He did not approach the Plaintiff to use Plot No. 279 in Kanyarkwat Group Ranch or Plot No. 278. He had never cultivated on Plot No. 278 or 279. In fact, he did not know where they were located. He did not construct the said permanent structure. He maintained that he resided over his father's parcel of land known as Plot No. 216 Kanyarkwat Group Ranch. He urged this court to dismiss the suit with costs.

Submissions

8. After close of their cases, parties elected by consent to impress the Court with written submissions. As at the time of writing this judgment, this Court was in receipt only of the Defendant's submissions dated 23/05/2022 and filed on 24/05/2022. He submitted that the Plaintiff was dishonest and his evidence was marred with grave inconsistencies. To him, firstly, he challenged that the Plaintiff could not have owned the suit land for fourteen (14) years if indeed he occupied the said parcel of land since 2017. Secondly, he cited that the Plaintiff did not take possession of the parcel. Thirdly, that the Defendant stated that the person occupied his land from 2005 yet his plot No. 278 existed from 2014. Fourthly, he accused Rengono Todumuk Julius of entering the suit land without permission yet indicated that he had given someone permission to occupy the suit land. Fifthly, it was unclear whether the Defendant did ingress upon the suit land in 2014, 2005 or 2017. Furthermore, it was not established that the Defendant set up the permanent structure. Finally, the Plaintiff did not prove that he was related to the Defendant. He submitted that since the Plaintiff failed to discharge his burden of proof on a preponderance of the evidence adduced, the suit ought to be dismissed with costs.



9. I have carefully considered the pleadings filed, the evidence and the submissions buttressing diametrically opposed parties. The Plaintiff seeks a declaration that he is the legal owner of Plot No. 279 and that the Defendant be restrained in anyway whatsoever from interfering with that ownership. In analyzing the evidence on record, I am guided by the provisions of the Evidence Act necessitating that he who propounds must prove whatever allegations he puts forth before the Court.
10. The Plaintiff remained emphatic throughout the trial that the Defendant was a trespasser of his Plot No. 279 after illegally extending his stay. He described the Defendant as the Area Chief of Kanyarkwat location. He remained adamant in his evidence that the Defendant was called Rengono Todumuk Julius and was his relative. The Defendant denied that he was the Defendant and produced a copy of his I.D. card for this presupposition. With the production of his own I.D. card, it considerably remains mysterious how the Plaintiff arrived at the decision of serving the said Rengono Todumuk Julius, with pleadings who maintained throughout the course of trial that he was not and had never borne the names of the Defendant that is Topemuk Rengono. In fact, this was the dilemma my brother Justice Mwangi Njoroge was faced with when he ruled on the Plaintiff's Application for injunctive relief. It is also quite baffling and incredulous as to why the Plaintiff, in spite of these tale signs, opted to proceed with the matter as it is yet that was a grave incurably defective technicality.
11. From that foregoing analysis, it would certainly be unsafe to find merit in the Plaintiff's suit for two reasons; firstly, it appears that the Plaintiff unilaterally sued the wrong party. Secondly, even if the Defendant truly exists, any substantive orders, if at all, granted against him, will subvert the course of justice since he has never been given an opportunity to defend himself. This would be in blatant and flagrant violation of the Constitution and in particular, the provisions of Article 159 of the Constitution.
12. Even if I were to analyze the evidence on record, I would still find in favor of the Plaintiff's adversary. The Plaintiff failed to establish to the required standard that he was a beneficiary of Plot No. 188. It is also not established whether the said Plot No. 279 was the result of a 'morphosis' or subdivision of Plot No. 188 that was allegedly subdivided into two plots. The Plaintiff further failed to present to this court, whether orally or documentary, that the said Plot No. 279 belonged to him. I therefore find the paucity of his evidence incredible enough to find the suit proved on its merits.
13. The upshot of the above is that the Plaintiff has failed to prove his case on a balance of probabilities. Consequently, the suit herein is dismissed with costs to Rengono Todumuk Julius.

JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 26TH DAY OF JULY, 2022.

DR. IUR FRED NYAGAKA

JUDGE, ELC, KITALE.

