



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Case 18, 19, 21, 22, 23, 24, 25 & 26 of 2009

RICHARD MWANGI KAMAU.....PLAINTIFF

Versus

LELEREKO LENDIRA & 36 OTHERSDEFENDANTS

CONSOLIDATED WITH

HIGH COURT CIVIL CASE NO.19 OF 2009

ELLAM MINJU KAMWERU.....PLAINTIFF

Versus

LELEREKO LENDIRA & 36 OTHERS.....DEFENDANT

HIGH COURT CIVIL CASE NO.21 OF 2009

JOHNSON MURAGURI MURIUKI.....PLAINTIFF

Versus

LELEREKO LENDIRA & 36 OTHERS.....DEFENDANTS

HIGH COURT CIVIL CASE NO.22 OF 2009

WILSON WAIHENYA MURIUKI.....PLAINTIFF

Versus

LELEREKO LENDIRA & 36 OTHERS.....DEFENDANTS

HIGH COURT CIVIL CASE NO.23 OF 2009

MOSES MIANO MURIUKI.....PLAINTIFF

Versus

LELEREKO LENDIRA & 36 OTHERS.....DEFENDANTS

HIGH COURT CIVIL CASE NO.24 OF 2009

JAMES KAMWERE MURIUKI.....PLAINTIFF

Versus

LELEREKO LENDIRA & 36 OTHERS.....DEFENDANTS

HIGH COURT CIVIL CASE NO.25 OF 2009

ERASTUS MURAGURI MURIUKI.....PLAINTIFF

Versus

LELEREKO LENDIRA & 36 OTHERS.....DEFENDANTS

HIGH COURT CIVIL CASE NO.26 OF 2009

NELSON GUANDARU MURIUKI.....PLAINTIFF

Versus

LELEREKO LENDIRA & 36 OTHERSDEFENDANTS

J U D G M E N T

These eight civil cases were consolidated for ease of hearing. The plaintiffs obtained interlocutory judgment default of appearance by the defendants. The cause of action is the same. The prayers sought in the various plaints are the same. The defendants too are the same. In the premises it was only fair and just that the eight cases be consolidated and heard as one.

The plaintiffs' case against the defendants jointly and severally is for a declaration that they have no right to occupy and utilize land parcel numbers LR. No.13543/11 Laikipia, 13543/12 Laikipia, 13543/23 Laikipia, 12543/24 Laikipia, 13543/25 Laikipia, 13543/26 Laikipia, 13543/27 Laikipia and 13543/28 Laikipia respectively hereinafter referred to as "*the suit premises*," a permanent injunction against the defendants to cease their unlawful occupation of the said suit premises, an order that the defendants do vacate the said suit premises and in default they be evicted therefrom and costs of the suits. The plaintiffs' claims were anchored on the fact that at all material times the plaintiffs were the registered proprietors of the aforesaid suit premises. However the defendants jointly and severally and without any color of right or other legal justification unlawfully invaded the suit premises and settled therein to graze on the same and other adjacent parcels alleging to be exercising their pastoralist way of life. The plaintiffs' further claim that the defendants' unlawful acts have denied them the use and benefit of their private properties. Through themselves and provincial administration, they have issued Notices to the defendants to vacate the suit premises but the defendants have adamantly refused and or neglected to comply, hence this suit.

Though the defendants were individually and personally served with summons to enter appearance, none of them saw the need to answer to the summons. Accordingly on 10th June, 2009, through Messrs Lucy Mwai & Company Advocates, the plaintiffs' applied for interlocutory judgment in default of appearance. The same was duly granted on 11th June, 2009. Thereafter the cases were set down for formal proof.

On 25th June, 2009, the formal commenced before. Only one plaintiff testified on his own behalf and

on behalf of the other plaintiffs. Mr. Richard Mwangi Kamau testified that they sued the defendants because they had trespassed on their various parcels of land. The defendants first entered the suit premises in 2002 and constructed Manyattas. Since then they have tried albeit unsuccessfully to evict them by giving them notices, talking to them and also seeking the intervention of the provincial administration to no avail. The witness tendered in evidence, copies of the notice they had issued and served on the defendants. The witness also tendered in evidence copies of the title deeds in respect of their various parcels of land. The plaintiff therefore pleaded with me to issue eviction orders as he was persuaded and convinced that the defendants would not be able to vacate the suit premises unless ordered so by the court. That was the reason that they were in court. With that the plaintiffs' closed their case.

Having carefully read and considered the plaint and the oral testimony of Richard Mwangi Kamau on behalf of himself and the other plaintiffs, I am satisfied on the uncontroverted and challenged evidence aforesaid that the plaintiffs have on the balance of probabilities proved their case. They have demonstrated that they own the suit premises. They have also demonstrated to my satisfaction their efforts at getting the defendants to move out of the suit remises voluntarily have been to no avail. I have even been shown News item in the standard Newspaper of 20th December, 2008 in which the defendants had vowed not to vacate the suit premises despite the Government's December 31 deadline to relocate or be forcibly evicted. It would appear from that Newspaper cutting that about two months earlier, the then Lakipia East D.C, Mr. Daniel Nduti, had given the defendants and other squatters until December, 31st to move out or be forcibly evicted. The defendants ignored that directive. The defendants are not saying that the land belongs to them nor have they challenged the plaintiffs' entitlement to the same.

That being the case, I think that the plaintiffs were right in seeking the court's intervention. The plaintiff having satisfied me as to the merits of their case I would grant them prayers (a), (b) (c) and (d) set out their various plaints. The defendants shall have forty five (45) days from the date of delivery of judgment to voluntarily vacate the suit premises failing which they shall be forcibly evicted.

Dated and delivered at Nyeri this 16th day of September, 2009.

M.S.A. MAKHANDIA

JUDGE