



**Tombe Tea Factory Limited v Getoka (Environment & Land Case
E008 of 2023) [2024] KEELC 7177 (KLR) (1 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7177 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E008 OF 2023**

EM WASHE, J

OCTOBER 1, 2024

BETWEEN

TOMBE TEA FACTORY LIMITED PLAINTIFF

AND

GEDION ROSWE GETOKA DEFENDANT

JUDGMENT

1. The Plaintiff herein filed a Plaint dated 05.10.2023 (hereinafter referred to as “the present suit”) seeking for the following Orders against the Defendant; -
 - a. That a permanent order of injunction be and is hereby issued restraining the Defendant himself and/or any person claiming or acting in the name of the Defendant by whatever name called from encroaching upon, intruding into, trespassing onto, occupying, taking possession, cultivating, ploughing or undertaking any social or economic activity in the Plaintiff’s land parcel No. LR. No. Transmara/ Moyoi/134.
 - b. An order and or declaration be and hereby made that the Defendant has no legal entitlement or right to occupy or seek to occupy LR.Transmara/moyoi/134 or any portion thereof.
 - c. An Order directing the officer commanding Transmara Police Division to protect the right of the Plaintiff to the subject property known as LR. No. Transmara/ Moyoi/134 and to enforce the attendant order and directives of this Honourable Court with regard to the subject property.
 - d. Any germane relief deemed fit for grant by the Honourable Court in exercise of its jurisdiction under the Environment and Land Court Ac, No.19 of 2011 (revised) 2012.
 - e. Costs of this suit.



2. The Summons to Enter Appearance and the pleadings were duly served on the Defendant who filed a Memorandum of Appearance dated 16.10.2023 on the 17.10.2023.
3. Thereafter, the Defendant failed to file any Statement of Defence within the prescribed time and the matter was listed for Pre-Trial on the 25.01.2024.
4. On the 25.01.2024, the matter was certified ready for hearing and the Court directed the hearing to be done on the 18.03.2024.
5. The Plaintiff was however directed to serve a Hearing Notice on the Defendant to inform him of the hearing scheduled for the 18.03.2024.

Plaintiff's Case

6. The Plaintiff's case proceeded on the 18.03.2024 with the first witness being one James Kerosi Nyagesere who was marked as PW 1.
7. PW 1 introduced himself as a director of the Plaintiff who had been authorised to plead as well as appear before this Court and testify on the issues at hand.
8. PW 1 produced an Authority to Swear on behalf of the Plaintiff dated 02.10.2023 as PW 1 Exhibit 1.
9. PW1 testified that the Plaintiff herein is the registered owner of the property known as LR. No. Transmara/ Moyoi/134 and produced the Certificate of Title issued on the 27.02.2013 as PW 1 Exhibit 2.
10. PW 1 further produced a certified Copy of the Green Card to the property known as LR. No. Transmara/ Moyoi/134 as PW 1 Exhibit 3.
11. PW 1 informed the Court that the Defendant has unlawfully and without any colour of right entered into a portion of the property known as LR. No. Transmara/ Moyoi/134 and therefore an order of eviction should be issued accordingly.
12. PW 1 also testified that an order of permanent injunction should be granted to prohibit the Defendant from ever interfering and/or using any portion of the property known as LR. No. Transmara/ Moyoi/134 forthwith.
13. PW 1 after this testimony was discharged from the witness box and the Plaintiff closed their case.
14. The Plaintiff thereafter filed their written submissions on the 18.04.2024.
15. In an effort to assist the Court, the Land Registrar was directed to visit the property known as LR. No. Transmara/ Moyoi/134 and confirm whether or not the Defendant was in occupation and/or use of any portion of the property in dispute known as LR. No. Transmara/ Moyoi/134.
16. Indeed, two Ground Reports by the Land Registrar, Transmara as well as Land Surveyor, Transmara dated 04.07.2024 and 24.07.2024 respectively were filed on the 25.07.2024.
17. The Court has duly perused the Plaintiff's Complaint dated 05.10.2023, the evidence of PW 1, the documents produced during trial, the submissions thereof and the Ground Reports by the Land Registrar as well as the Land Surveyor and the issues for determination are as follows; -

Issue No. 1- Is The Plaintiff The Lawful & Registered Owner Of The Property Known As Lr. No. Transmara/ Moyoi/134?



Issue No.2- Is The Plaintiff Entitled To An Order Of Eviction Over The Portion Occupied By The Defendant On The Property Known As Lr. No. Transmara/ Moyoi/134?

Issue No. 3- Is The Plaintiff Entitled To An Order Of Permanent Injunction Against The Defendant Over The Property Known As Lr. No. Transmara/ Moyoi/134?

Issue No. 4- Is The Plaintiff Entitled To The Prayers Sought In The Plaint Dated 05.10.2023?

Issue No.5- Who bears the cost of the present suit?

18. The Court having identified the above issues for determination, the same will now be discussed hereinbelow; -

Issue No. 1- Is the plaintiff the lawful & registered owner of the property known as LR. No. Transmara/ Moyoi/134?

19. The first issue for determination is who is the lawful and registered owner of the property known as LR. No. Transmara/ Moyoi/134.

20. According to PW 1, the property known as LR. No. Transmara/ Moyoi/134 is registered in the name of the Plaintiff as contained in the Certificate of title dated 27.02.2013 and the certified copy of the Green Card issued on the 02.10.2023.

21. The Sub-County Land Registrar, Transmara East, West and South in his Ground Report dated 24.07.2024 also confirmed that indeed the property known as LR. No. Transmara/ Moyoi/134 was registered in the name of the Plaintiff.

22. The provisions of Section 24 (1) of the Land Registration Act, No. 3 of 2012 expressly state as follows; -

“(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto.....”

23. The Defendant on the other hand did not challenge the ownership of the Plaintiff when he was duly served with the Plaint dated 05.10.2024 by filing any Defence therein.

24. It is clear and not in dispute that the Plaintiff is the lawful and registered owner of the property known as LR. No. Transmara/ Moyoi/134 as contained in the Certificate of Title issued on the 27.02.2013 and the Green Card certified on the 02.10.2023.

25. This Court therefore makes a finding that the property known as LR. No. Transmara/ Moyoi/134 belongs to the Plaintiff herein.

Issue No.2- Is the plaintiff entitled to an order of eviction over the portion occupied by the defendant on the property known as LR. No. Transmara/ Moyoi/134?

26. The second issue for determination is whether the Plaintiff is entitled to an Order of eviction against the Defendant or not.

27. The Plaintiff through the testimony of PW 1 informed the Court that the Defendant without authority and/or consent is in occupation and use of a portion of LR. No. Transmara/ Moyoi/134.

28. As earlier stated, the Defendant did not file any Defence to challenge this allegation by the Plaintiff.



29. The Sub-County Land Registrar, Transmara East, West and South through his Ground Report dated 04.07.2024 confirms that indeed the Defendant is in occupation of approximately 20.23 Hectares of the property known as LR. No. Transmara/ Moyoi/134.
30. The Sub-County Land Registrar, Transmara West, East and South in his conclusion of the Ground Report dated 04.07.2024 noted that the Defendant had indeed trespassed into the property known as LR. No. Transmara/ Moyoi/134 belonging to the Plaintiff.
31. Based on the testimony of PW 1 and the Ground Report dated 04.07.2024 by the Sub-County Land Registrar, this Court hereby makes a finding that the Defendant has indeed trespassed into the Plaintiff's property known as LR. No. Transmara/ Moyoi/134 as alleged by the Plaintiff and confirmed by the Sub-County Land Registrar, Transmara East, West and south in his Ground Report dated 04.07.2024.
32. As a consequence of this Trespass, the Plaintiff is entitled to an order of eviction against the Defendant to ensure that he takes over his lawful property known as LR. No. Transmara/ Moyoi/134 and enjoy the rights and privileges as envisaged under Section 24 (a) of the Land Registration Act, No. 3 of 2012.

Issue No. 3- Is the plaintiff entitled to an order of permanent injunction against the defendant over the property known as LR. No. Transmara/ Moyoi/134?

33. The third issue is whether or not the Plaintiff is entitled to an order of permanent injunction against the Defendant over the property known as LR. No. Transmara/ Moyoi/134.
34. The Court having made a finding that the property known as LR. No. Transmara/ Moyoi/134 lawfully belongs to the Plaintiff and that the Defendant's occupation of the said property is illegitimate and unlawfully, then the Plaintiff is entitled to an order of permanent injunction restraining the Defendant from any further and future interference of the said property in whatsoever and whichever manner as no lawful rights exist.

Issue No. 4- Is the plaintiff entitled to the prayers sought in the plaint dated 05.10.2023?

35. Based on the determination of Issues No. 1, 2 and 3, this Court is satisfied that the prayers sought in the Plaint dated 05.10.2023 are merited and should be granted to the Plaintiff.

Issue No.5- Who bears the cost of the present suit?

36. Costs usually follow the event and in the present suit, the costs of the suit will be borne by the Defendant as the Plaintiff has been successful in prosecution of his Plaint dated 05.10.2023.

Conclusion

37. In conclusion therefore, this Court hereby makes the following Orders in determination of the Plaint dated 05.10.2023; -
 - A. An order and/or declaration be and is hereby made that the plaintiff is the lawful & registered owner of the property known as LR. No. Transmara/ Moyoi/134.
 - B. The defendant is illegally and unlawfully in occupation of the property known as LR. No. Transmara/ Moyoi/134 and therefore a trespasser on the said property.
 - C. The Defendant Himself, His Agents, Servants, Employees And/or Any Other Person Claiming Occupation By Virtue Of The Defendant Is Hereby Ordered And/or Directed To Move Out, Vacate And/or Hand Over Possession And/or Occupation Of Any Portion Of



Land Within The Property Known As LR. No. Transmara/ Moyoi/134 To The Plaintiff Herein Within The Next 60 Days From The Date Of This Judgement.

- D. In Default Of Order No. C Hereinabove, An Order Of Eviction Shall Automatically Issue Under The Hand Of The Deputy Registrar Of The Environment & Land Court, Kilgoris Against The Defendant Himself, His Agents, Servants, Employees And/or Any Other Person Claiming Occupation By Virtue Of The Defendant On The Property Known As L.r.no. Transmara/moyoi/134.
- E. An Order Of A Permanent Injunction Be And Is Hereby Issued Restraining The Defendant Himself And/or Any Person Claiming Or Acting In The Name Of The Defendant By Whatever Name Called From Encroaching Upon, Intruding Into, Trespassing Onto, Occupying, Taking Possession, Cultivating, Ploughing Or Undertaking Any Social Or Economic Activity In The Plaintiff's Property Known As No. Transmara/moyoi/134.
- F. The Defendant Will Bear The Costs Of This Suit.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 1ST OCTOBER 2024.

EMMANUEL.M.WASHE

JUDGE

In the presence of:

Court Assistant: Mr. Ngeno

Advocate For The Plaintiff: Ms. Nyaboke H/b Nyambega

Advocate For The Defendant: N/a

