



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 41 OF 2011**

**JOSEPH OTWABE.....1<sup>ST</sup> PLAINTIFF**

**MARAGIA OGETO.....2<sup>ND</sup> PLAINTIFF**

**ROBINSON TAL.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**1. JACKSON NYANDIEKA.....1<sup>ST</sup> DEFENFANT**

**2. MOI NYANDIEKA.....2<sup>ND</sup> DEFENDANT**

**3. AGNES NYANDIEKA.....3<sup>RD</sup> DEFENDANT**

**4. MUKUA NYANDIEKA.....4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. In the amended plaint dated **8/7/2013** which was filed on the same date the plaintiffs seek the following orders against the defendants:-

(a) **An eviction order against all the defendants their agents/servants and those claiming under him from title deed No. Kiminini/Matunda Block 4/Nyamira/75;**

(b) **A permanent injunction restraining the defendants their agent, servants and those claiming under him from interfering in any manner with title deed No. Kiminini/Matunda Block 4/Nyamira/75.**

(c) **Costs of this suit.**

(e) **Any other relief the court may deem fit to grant for the best interests of justice.**

**THE PARTIES PLEADINGS**

**The Plaintiff's Case**

2. According to the plaint the plaintiffs and the defendants are members of Nyamira Farm which had about **184** members; that in the year **1998**, Nyamira Farm was subdivided and each individual member got his/her own title deed; that during the subdivision process of the Nyamira Farm and during the process of issuance of title deed the plaintiffs were registered as owners of **Title Nos. Kiminini/Matunda Block 4/Nyamira/33-99**, and **68** while the **1<sup>st</sup>** defendant was registered as the owner of **Title No. Kiminini/Matunda Block 4/Nyamira/78** during the same period, title No. **Kiminini/Matunda Block 4/75** which was part of Nyamira Farm was set aside as public utility (quarry) and registered under the government of Kenya and that **Title No. Kiminini/Matunda Block 4/75** as a public utility would serve as a quarry, playing ground, a health centre, a school and a market centre for the general public interest of the Nyamira Farm members and the surrounding but the defendant has fenced the land comprised in title deed **Kiminini/Matunda Block 4/Nyamira/78** hence denying the rest from enjoying it as a public utility.

**The Defendants' Case**

3. The defendants filed joint defence dated **20/3/2015** it is a mere denial of the plaintiff's claim. The defence is a general denial which does not give any facts on admission.

## The Defendants' Evidence

4. This suit proceeded to hearing on the 21/2/2017 when the 1<sup>st</sup> plaintiff gave evidence. It further proceeded on 28/5/2018 when he was further cross examined. On 9/7/2018 PW2 the County Surveyor Trans-Nzoia County gave evidence. On that date the plaintiff's case was closed. The defence case was adjourned to 10/7/2018 to enable Mr. Ambutsi counsel for the defendant to obtain his witnesses. On 10/7/2018 it was reported by the plaintiff's counsel that the defendants were in court and the court denied them an adjournment during the call over and ordered that the hearing of the defence case commences at 10.30 am. At 10.30 am the matter was called outside the court's door and there was no appearance either by the defendants or their counsel and the defence case deemed closed, the parties ordered to file submissions and a mention date set for 30/9/2018. On 30/9/2018 both parties were given the chance to their file submissions but only the plaintiff filed his submissions on 15/8/2018.

## The Plaintiffs' Evidence

5. The plaintiffs' evidence comprised of documentary evidence a letter dated 16/2/2000 from the Co-operative Officer Trans-Nzoia, a certificate of official search for plot No. Kiminini/Matunda/Block 4/Nyamira/75 and a letter dated 21/7/2010 from the Land Registrar, Trans-Nzoia addressed to the District Officer Kiminini as well as a surveyor's report dated 4/1/2011.

6. It was PW1's evidence that he had been chairman of the Nyamira Co-operative Society Limited which was formed for purposes of buying land; that there was a special general meeting that which he was elected chairman; that he and the other plaintiffs are officials of the society; that the 1<sup>st</sup> defendant has his own land referred to as Plot No. Kiminini/Matunda Block 4/78; that the 1<sup>st</sup> defendant and members of his family who include the 2<sup>nd</sup> to 4<sup>th</sup> defendants encroached on Plot No. Kiminini/Matunda Block 4/75; that the 2<sup>nd</sup> to 4<sup>th</sup> defendants are the children of 1<sup>st</sup> defendant; that the surveyor showed them the boundary to their land and placed beacons thereon but the defendants uprooted those beacons and continued to occupy Plot No. Kiminini/Matunda Block 4/75. The Land Registrar has written a letter dated 21/7/2010 confirming that the land is reserved for a quarry and that the 1<sup>st</sup> defendant's proper plot is Kiminini/Matunda Block 4/78.

6. **PW2, Bainito Ombudu** Hussein testified on 9/7/2018. His evidence is that he was the **County Surveyor** Trans-Nzoia since 2010; that in the year 2010 he was requested to go and establish a common boundary between parcels Nos. Kiminini/Matunda Block 4/75 and Kiminini/Matunda Block 4/78; that he visited the site on 8/11/2010 and found that the common boundary had been removed; that he found that the owner of parcel No. Kiminini/Matunda Block 4/78 did not recognize the independence of parcel No. Kiminini/Matunda Block 4/Nyamira/75; that he reinstated the boundary and instructed the concerned parties to respect it; that parcel No. Kiminini/Matunda Block 4/75 is meant for public utilities. He produced his report restating the above evidence as **P. Exhibit 7(a)** and the map of the suit land as **P. Exhibit 7 (b)**.

7. I have examined the original certificate of official search dated 18/3/2011(**P. Exhibit 4**) and come to the conclusion that the suit land is not registered in the name of any of the defendants. It is registered under the Government of Kenya. The certificate of official search shows that it is reserved for a quarry. I also considered the expert evidence of PW2 which demonstrate that the defendants are in occupation of the suit land.

8. The defendants have not demonstrated the basis on which they have done so. When they were accorded an opportunity to give evidence and justify their occupation of the land they simply walked out the court and never returned. The plaintiffs' evidence is therefore unchallenged.

## CONCLUSION

9. I therefore that find the plaintiffs have proved their claim on a balance of probabilities I therefore enter in the plaintiffs' favour against the defendants jointly and severally and order as follows:-

**(a)The defendants, their agents/servants and those claiming under them shall remove themselves, and their property from all that parcel of land Kiminini/Matunda Block 4/Nyamira/75 and in default they shall be evicted therefrom;**

**(b) An order of permanent injunction is hereby issued restraining the defendants their agents, servants and those claiming under them from interfering in any manner with the land comprised in title No. Kiminini/Matunda Block 4/Nyamira/75;**

**(c) The defendants shall meet the costs of this suit.**

It is so ordered.

**Dated, signed and delivered at Kitale on this 2<sup>nd</sup> day of October, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**2/10/18**

**2/10/2018**

Coram: Before Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Kibii holding brief for Ms. Arunga for the plaintiff

N/A for the defendants

**COURT**

Judgment read in open court.

**MWANGI NJOROGE**

**JUDGE**

**2/10/2018**