



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KAJIADO

ELC CASE NO. 921 OF 2017 (FAST TRACK)

ALEX SILEID NKIRIMPAI.....1ST PLAINTIFF

JOSEPH OLEKU NKIRIMPAI.....2ND PLAINTIFF

VERSUS

NTOOKI PAPU.....DEFENDANT

JUDGMENT

Alex Sileid Nkirimpai and Joseph Oleku Nkirimpai the Plaintiffs herein seek the following reliefs against the Defendant Ntooki Papu;

(a) An Injunction restraining the Defendant by himself, his servants or agents from alienating, disposing, selling or in any manner interfering with the Plaintiffs' land known as *KAJIADO/KAPUTIEI-NORTH/578*.

(i) *An Order directing the District Land Surveyor to comply with the decree issued on 3rd July, 2018 by entering the disputed area to confirm the surveyor's report which concurs with the title deed -578 which measures 135 acres at point C and the two parcels as per Registry Index Map.*

(b) Costs of the suit and interest therein. This is as per the amended plaint dated 25th September, 2020.

The Plaintiffs' case is as follows;

They are the sons of Kapura Ene Nkirimpai and Sinkira Ene Nkirimpai who were the original allottees of LR. NO. KAJIADO/KAPUTIEI-NORTH/578 which measures 135 hectares. The Defendant who owns LR. NO. KAJIADO/KAPUTIEI-NORTH/579 which measures 117 hectares moved his beacons and encroached on L.R. NO. KAJIADO/KAPUTIEI-NORTH/578 by 250 metres.

The Plaintiffs lodged a complaint with the authorities including the Land Registrar and the District Land Disputes Tribunal. The dispute was resolved and the beacons moved back to their original and correct position.

In the meantime, the Defendant sold part of his land after subdividing and purported to sell part of the Plaintiffs land that he had encroached on. She even filed a suit which is Miscellaneous J.R. No. 178 of 2012 which she temporarily used to delay the implementation of the decision of the Land Disputes Tribunal.

The said suit was later dismissed for want of prosecution.

All that now remains is the implementation of the Tribunal's decree so that the beacons may be put in their proper place.

In support of their case the Plaintiffs filed the following;

- (1) Witness statement by Joseph Oleku Nkirimpai dated 25/3/2019
- (2) Demand letter to the Defendant dated 15/2/2012
- (3) Copy of Title Deed for L.R. NO. KAJIADO/KAPUTIEI-NORTH/578
- (4) Certificate of Official Search dated 7/9/2011 showing that L.R. NO. KAJIADO/KAPUTIEI NORTH/579 in the name of the Defendant measures 117.0 hectares.

- (5) Boundary disputes summons dated 21/7/2011, 19/10/2011 and 31/1/2012.
- (6) Mutation Form for L.R. KAJIADO KAPUTIEI-NORTH/579.
- (7) Letter by the Plaintiffs' advocate to the Land Registrar Kajiado dated 12/1/2012.
- (8) Letter by the chief Land Registrar to District Land Registrar Kajiado on the boundary dispute between LR. NO. KAJIADO KAPUTIEI-NORTH/578 and LR. NO. KAJIADO KAPUTIEI-NORTH/579.
- (9) Copy of proceedings before the District Land Disputes Tribunal Kajiado North including the verdict.
- (10) Copy of Decree in the Magistrate's Court at Kajiado Case No. 33 of 2012 dated 3/7/2012.
- (11) An order issued in ELC MISCELLANEOUS CASE NO. 178/2012 dated 25/1/2017

Though this case has been pending before court for almost ten year, the Defendant has never filed a defence and that is why they could not proceed on 4/10/2021 when the case came up for hearing.

Counsel for the Plaintiffs filed written submissions on 28/10/2021.

I have carefully considered the pleadings and the evidence on record and I make the following findings;

Firstly, this case concerns a dispute relating to the boundary between parcels KAJIADO/KAPUTIEI-NORTH/578 and KAJIADO /KAPUTIEI –NORTH/579. Under **Section 18(2) of the Land Registration Act**, such a dispute is to be resolved by the Land Registrar not by the Court.

Secondly, the dispute has already been resolved by the District Land Disputes Tribunal which correctly referred the matter to the Land Registrar for implementation. This decision of the Tribunal was confirmed by the Magistrate's Court.

Thirdly, there was no need to file this suit because the decision of the Tribunal was enforceable after confirmation by the Magistrates Court.

Fourthly, to give finality to the matter, I enter Judgment for the Plaintiffs as prayed for in the plaint.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 2ND DAY OF DECEMBER, 2021.

M.N. GICHERU

JUDGE