



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 494 OF 2017

FORMERLY KISII ELC NO. 512 OF 2016

SAMWEL BABU MAKURU.....PLAINTIFF

VERSUS

DORCAS BOCHER STEPHEN1ST DEFENDANT

LAND REGISTRAR, TRANS-MARA DISTRICT.....2ND DEFENDANT

JUDGEMENT

The Plaintiff had commenced the suit herein by way of a Plaint filed in court on 22nd September, 2019 in which he sought for a permanent injunction restraining the Defendants, their agents or anybody claiming under their name from interfering with, damaging, alienating, changing the registry map or issuance of title deeds within land parcel No. Trans Mara/Moyoi/208 hereinafter referred to as the suit land and costs of the suit. The Plaintiff contends that he is the absolute registered owner of the suit land and the 1st Defendant is the registered owner of land parcel No. Trans Mara/Moyoi/207.

The Plaintiff further states that there are 2 cases namely Kisii HCCC No. 11 of 2007 and Kilgoris Miscellaneous Application No. 5 of 2006 relating to the two parcels of land in which the suit in Kisii was not heard but a decision reached in Kilgoris Miscellaneous Application No. 5 of 2006 where the 2nd Defendant was directed to establish the boundaries between the two parcels of land and that on 7th September, 2011 the 2nd Defendant proceeded to where the two parcels of land are situated and instead of implementing the order he curved the Plaintiff's land and gave the 1st Defendant a portion measuring 8 acres.

In view of the above, the Plaintiff contends that the 2nd defendant has threatened to change the Registry Index Map and issue a new title to the 1st Defendant.

The 1st Defendant had filed a statement of defence and admitted that he is the owner of land parcel Trans Mara/Moyoi/207 but denied the extend of the acreage claimed by the Plaintiff. He further admitted that here was an order by the Provincial Lands Appeals Committee which was adopted by the Kilgoris Senior Resident Magistrate court in Miscellaneous Application No. 5 of 2006 which was executed by the 2nd Defendant. He further contended that the suit filed is bad in law, misconceived and is untenable to extend that the same is res judicata.

I have considered the evidence before me and heard witness testimony by both the plaintiff and the defendant. This suit was preceded by hearing both at the District lands tribunal which heard the dispute between the parties that resulted in the Kilgoris Senior Resident Magistrate court adopting the decision of the Provincial Appeals Committee that resulted in the 2nd Defendant implementing the orders of the court.

It is not disputed by both the parties that what necessitated the instant suit is the dissatisfaction of the Plaintiff with the decision of the provincial appeals committee. The 2nd defendant had stated that he was ordered by the Kilgoris Magistrate's court to visit the suit land and identify the boundaries of Trans Mara/Moyoi/207 and 208 and when he visited the suit he found that he could not implement the orders of the court as the land parcels on the Registry Index map were different in location and acreage from the actual position on the ground and hence an amendment of the said Registry Index Map would be necessary and that he never curved out any parcel of land as claimed by the Plaintiff.

Having considered the testimony of the witness herein being litigated before the District Land Dispute Tribunal and the Provincial Appeals Committee the issues for determination is whether the suit herein is res judicata. It is not disputed that the suit herein arose out of the determination of an appeal by the Pronvincial Appeals Committee Rift Valley and the adoption of the same by the Kilgoris Magistrate's Court. That being the case, I find that this dispute was adequately and conclusively heard and determined and the instant suit filed by the Plaintiff is an abuse of the process of the court and therefore the suit herein lacks merit and I therefore dismiss with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 27TH day of FEBRUARY, 2020

Mohammed Kullo

Judge

27/2/2020

In the presence of: -

CA:Chuma/Kimiriny

Mr. Kariuki holding brief for Ogutu for the 1st Defendant

N/A for the Plaintiff

Mohammed Kullo

Judge

27/2/2020