



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC CASE NO. 335 OF 2017

JOHN KATILI MAKAU (Suing as Legal representative &

Administrator of the Estate of SYOKWIA MAKAU NGUNZI

Alias NGUNZI MUKONZE MAKAU.....PLAINTIFF

VERSUS

MUTUKU SILINGI.....DEFENDANT

JUDGEMENT

1. By his plaint dated 18th September, 2017 and filed in court on even date, the Plaintiff, suing as the legal representative and administrator of the estate of Syokwia Makau Ngunzi *alias* Ngunzi Mukonze Makau, prays for judgement against the Defendant for: -

a. A declaration that LAND PARCEL NO.421 KAUMONI ADJUDICATION SECTION belongs to the deceased's estate.

b. A permanent injunction restraining the Defendant by himself his agents and/or servants from entering onto and/or encroaching and/or grazing on and/or cutting down trees or in any other manner whatsoever interfering with LAND PARCEL NO.421 KAUMONI ADJUDICATION SECTION.

c. Costs of this suit and interest.

d. Any other relief that the Honourable court deems fit and just to grant.

2. The Plaintiff has pleaded in paragraphs 3, 4 and 5 of his plaint that at all material times to this suit, the estate of Syokwia Makau Ngunzi *alias* Ngunzi Mukonze Makau was the registered proprietor of land parcel No.421 Kaumoni Adjudication Section, that sometimes in the years 2015, 2016 and 2017 the Defendant unlawfully without any justification and/or permission wrongfully entered and/or trespassed onto the Plaintiff's land aforesaid and started grazing their cattle thereon, cutting down trees and doing other acts of damage and waste to land and that by reason of the said actions, the Plaintiff as well as the estate of the deceased have been denied use and enjoyment of the said parcel of land and the estate has been subjected to great inconvenience, loss and damage.

3. Upon being served on 11th October, 2017 with summons to enter appearance and file his defence, the Defendant entered appearance through the firm of Kurauka and Co. Advocates vide the Notice of appointment dated 06th November, 2017 and filed in court on 08th November, 2017. Simultaneously with the notice of appointment of advocate, the Defendant filed a notice of preliminary objection dated 06th November, 2017. He did not file any defence.

4. The notice of preliminary objection was heard and a ruling delivered on 23rd April, 2018 dismissing the said preliminary objection.

5. The matter was fixed for hearing on 10th July, 2019. The Plaintiff was directed to serve the Defendant with a hearing notice after the latter failed to turn up in court for fixing of a hearing date as can be seen from the return of service dated 06th May, 2019 and filed in court on 24th May, 2019.

6. During the hearing, the Plaintiff adopted his recorded statement dated 18th September, 2017 as his evidence in chief. He went on to produce the three documents in his list of documents dated 18th September, 2017 as P.Exhibit No.1, 2 and 3 respectively. In addition, the Plaintiff produced a fourth document in his list of documents dated 24th April, 2019 as P.Exhibit No.4.

7. Briefly the Plaintiff's evidence was that prior to his being appointed as an administrator of the estate of the deceased herein, the Defendant

entered and/or trespassed into land parcel No.421 Kaumoni Adjudication Section. The Plaintiff went on to state that the Defendant proceeded to cut down trees, to graze his cattle without any justification or colour of right and permission.

8. The Plaintiff sought legal assistance and he was advised to apply for letters of administration intestate in respect of his mother's estate (P.Exhibit No.2). That upon being issued with the said letters of administration, he instructed his advocate to write a demand letter (P.Exhibit No.3) to the Defendant who according to him has no adverse claim over the land then belonging to the Plaintiff's mother.

9. No evidence was adduced to the contrary nor did the Defendant exercise his right to cross-examine the Plaintiff in light of the Defendant's aforementioned notice of appointment of advocate.

10. In his submissions, the Plaintiff's Counsel urged the Court to enter judgement for the Plaintiff as prayed.

11. Amongst the documents that the Plaintiff produced was a letter of confirmation dated 20th June, 2014 from District Land Adjudication and Settlement Officer Makuani Adjudication area showing parcel numbers 421 and 422 in Kaumoni Adjudication Section are recorded in the names of Mukonze Makau and Jonathan Keesi Ngunzi. From the evidence on record, it seems to me that the Defendant had no legal justification to trespass into the Plaintiff's land parcel No.421 Kaumoni Adjudication Section and as such, I am satisfied that the Plaintiff has on a balance of probabilities a cause of action against the Defendant. In the circumstances, I hereby proceed to enter judgement in his favour and against the Defendant as follows: -

a. It is hereby declared that LAND PARCEL NO.421 KAUMONI ADJUDICATION SECTION belongs to the deceased's estate.

b. A permanent injunction be and is hereby issued restraining the Defendant by himself his agents and/or servants from entering onto and/or encroaching and/or grazing on and/or cutting down trees or in any other manner whatsoever interfering with LAND PARCEL NO.421 KAUMONI ADJUDICATION SECTION.

c. Costs of this suit and interest.

Signed, dated and delivered via email at **Makuani** this **29th** day of **April, 2020**.

MBOGO C. G.,

JUDGE.

Court Assistant - Mr. Kwemboi

MBOGO C. G. (JUDGE),

27/04/2020.