



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 812 OF 2017**

**(Formerly Nairobi ELC Case No. 1203 of 2016)**

**LANTEI KIKO SOKORTE.....1<sup>ST</sup> PLAINTIFF**

**NKOLOLO ENE LAUTEI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**CHEPTUMO AYABEL.....1<sup>ST</sup> DEFENDANT**

**MUTETE OLE MAYIANTO.....2<sup>ND</sup> DEFENDANT**

**JOHN SHALO OLE NAIKUNI.....3<sup>RD</sup> DEFENDANT**

**JUDGEMENT**

By a Plaint dated the 3<sup>rd</sup> October, 2016 and amended on 27<sup>th</sup> October, 2016, the Plaintiffs pray for judgement against the Defendants for:

a) An order of permanent injunction restraining the Defendants, its agents, servants interfering with the Plaintiffs original KJD/ KIPETO/ 1424 and an order of cancellation of plot No. 1674 and 1675 and other subsequent transfers thereof.

b) Costs of this suit.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed their Defence and Counterclaim dated the 20<sup>th</sup> January 2017 where they denied the Plaintiffs averments except for the descriptive and jurisdiction of the court. The 1<sup>st</sup> Defendant claimed to be the registered proprietor of Kajiado/ Kipeto/ 4917 which he purchased from the 2<sup>nd</sup> Defendant on 3<sup>rd</sup> September, 2014. They stated that the Plaintiffs are not bona fide owners of the suit properties. They explained that the Plaintiffs signed and consented to the Mutation forms to subdivide Kajiado/ Kipeto A/ 1424 into new parcel numbers 1674 and 1675 on 14<sup>th</sup> December, 1994. Further, title number Kajiado/ Kipeto/ 1674 was subdivided into 4917, 4918 and 4919 respectively on 3<sup>rd</sup> January, 2012. The 2<sup>nd</sup> Defendant contends that he purchased the suit premises from the 1<sup>st</sup> Plaintiff and paid the entire consideration and was duly registered as proprietor of the said land on 5<sup>th</sup> January, 2012. They filed a counterclaim where they sought the following orders:

a) The Plaintiffs' suit be dismissed with costs together with interest thereon at Court rates.

b) Judgement be entered for the 1<sup>st</sup> Defendant against the Plaintiffs for a Permanent Injunction restraining the Plaintiffs, either by themselves or their agents, servants, employees, assigns or any persons acting under their direction or instructions or otherwise howsoever from trespassing and/ or interfering, in any way, with the Defendant's ownership, quiet enjoyment, possession and use of Land Reference Number Kajiado/ Kipeto/ 4917.

c) Costs of this suit and of the Counterclaim together with interest thereon for such period and at such rate as this Honourable Court may deem appropriate.

d) Such other relief as this Honourable Court may deem fit to grant.

On 17<sup>th</sup> September 2019, the Plaintiffs' though duly served as evidenced by the affidavit of service sworn on 29<sup>th</sup> April, 2019 and filed in Court on 20<sup>th</sup> May, 2019 failed to attend court for the hearing. The Plaintiff's suit was dismissed with costs and the Defendants proceeded with the hearing of their counterclaim.

## Evidence of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

The 1<sup>st</sup> Defendant as DW1 adopted his witness statement dated the 20<sup>th</sup> January, 2017 as his evidence in chief. In the statement he confirmed being the registered owner of Kajiado/ Kipeto/ 4917 which he purchased from the 2<sup>nd</sup> Defendant on 3<sup>rd</sup> September, 2014 for Kshs. 7,000,000/=. He denied transacting with the Plaintiffs and further that he illegally as well as fraudulently subdivided their land to create plot 1674 and 1675 respectively. He referred to the Mutation Form dated the 14<sup>th</sup> December, 1995 where the 1<sup>st</sup> Plaintiff had applied for subdivision of Kajiado/ Kipeto/ A/ 1424 to Plot 1674 and 1675. Further, that vide a Mutation Form dated the 3<sup>rd</sup> January, 2012, the 1<sup>st</sup> Plaintiff further subdivided Kajiado/ Kipeto/ 1674 into plots 4917; 4918 and 4919 respectively. He explained that the Plaintiffs had previously interfered with their occupation of the suit land until 2017 when they ceased to do so. Further, that they used to cut the fence, move animals into the land and demolish structures thereon. He produced the following documents as exhibits: Copy of Stamp Duty Declaration, Assessment and Pay in slip for the Transfer of Kajiado/ Kipeto/ 4917 Serial Number 1194214 dated 5<sup>th</sup> January, 2012; Copy of Stamp Duty Payment Receipt dated 5<sup>th</sup> January, 2012; Copy of Agreement for Sale dated the 3<sup>rd</sup> September, 2014; Copy of Transfer of Kajiado/ Kipeto/ 4917 registered on 17<sup>th</sup> October, 2014; Copies of Cash Deposit receipts dated 11<sup>th</sup> August, 2014, 20<sup>th</sup> August, 2014, 29<sup>th</sup> August, 2014, 16<sup>th</sup> October, 2014 and 20<sup>th</sup> November, 2014 respectively; Copy of RTGS dated 11<sup>th</sup> September, 2014 ; Copy of Title Deed for Kajiado/ Kipeto/ 4917 dated 17<sup>th</sup> October, 2014; Copy of Certificate of Official Search for Kajiado/ Kipeto/ 4917 dated 19<sup>th</sup> October, 2015 and Copy of Mutation Form for title Number Kajiado/ Kipeto/ 1674 dated 3<sup>rd</sup> January, 2012.

The Defendants thereafter closed their case and filed submissions.

## Analysis and Determination

Upon consideration of the Pleadings filed herein including the Complaint, Defence and Counterclaim, Witness testimony, exhibits and submissions, the issue for determination is whether the Defendants are entitled to the orders sought in the counterclaim.

The 1<sup>st</sup> Defendant in his submissions reiterated his claim and contended that he is entitled to protection of the law as the registered proprietor of his land. Further, that he is entitled to the costs of the suit. He relied on the decisions of **Joseph Kipchirchir Koech V Philip Cheruiyot Sang (2018) eKLR** and **Nahason Maingi Muguna V Josphat Njiru M'arucha (2014) eKLR** to buttress his arguments. The 1<sup>st</sup> Defendant explained that he purchased his land from the 2<sup>nd</sup> Defendant on 3<sup>rd</sup> September, 2014 for Kshs. 7,000,000/=. He denied transacting with the Plaintiffs. On perusal of the Mutation Form dated the 14<sup>th</sup> December, 1995, it is evident that the 1<sup>st</sup> Plaintiff had initially applied for subdivision of Kajiado/ Kipeto/ A/ 1424 to Plot 1674 and 1675 respectively. Further, as per the Mutation Form dated the 3<sup>rd</sup> January, 2012, the 1<sup>st</sup> Plaintiff further subdivided Kajiado/ Kipeto/ 1674 into plots 4917; 4918 and 4919 respectively. I note the Plaintiffs never controverted these averments that it is the 1<sup>st</sup> Plaintiff who actually subdivided his land and not the Defendants as alleged. The 1<sup>st</sup> Defendant stated that he purchased his land from the 2<sup>nd</sup> Defendant who had initially purchased the same from the 1<sup>st</sup> Plaintiff. From a perusal of the various documents the 1<sup>st</sup> Defendant presented in Court including the Certificate of Title for Kajiado/ Kipeto/ 4917; Copy of Green Card for Kajiado/ Kipeto/ 4917; Certificate of Official Search dated the 19<sup>th</sup> October, 2015; Sale Agreement dated 3<sup>rd</sup> September, 2014; Transfer of Land Form dated 11<sup>th</sup> October, 2014, it is evident that the 1<sup>st</sup> Defendant indeed adhered to the legal process to acquire the suit land culminating in his obtaining a Certificate of Title on 17<sup>th</sup> October, 2014.

Section 24 (a) of the Land Registration Act further stipulates as follows: '**subject to this Act, the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.....**'

In the case of **Ahmed Ibrahim Suleiman and Another vs. Noor Khamisi Surur (2013) eKLR** where Justice J.M. Mutungi stated that '**the Plaintiff having been registered as proprietor and having been issued with a certificate of lease over title No/ Nairobi/Block 61/69 are in terms of section 26(1) of the Land Registration Act entitled to the protection of the law**'.

Further in the case of **WILLY KIPSONGOK MOROGO v ALBERT K. MOROGO (2017) eKLR** where the Court held as follows: '**the evidence on record shows that the suit parcel of land is registered in the names of the Plaintiff and therefore is entitled to the protection under sections 24, 25 and 26 of the Land Registration Act.**'

In associating myself with the two decisions, the legal provisions cited above as well as the evidence before me, I find that the 1<sup>st</sup> Defendant is indeed the absolute proprietor of land parcel number Kajiado/ Kipeto/ 4917 and hence entitled to protection of the land in accordance with the provisions of section 24, 25 and 26 of the Land Registration Act.

As to whether the Plaintiffs should be permanently restrained from interfering with land parcel number Kajiado/ Kipeto/ 4917. The 1<sup>st</sup> Defendant testified in court that the Plaintiffs' had previously interfered with his occupation of the suit land by cutting the fence, moving animals into the land and demolishing structures thereon until 2017 when they ceased to do so. Since I have held that the 1<sup>st</sup> Defendant is the registered proprietor and hence entitled to protection of the law and in line with the principles enshrined in the case of **Giella Vs Cassman Brown Co. Ltd (1973) EA 358**, I find that the Plaintiffs' should hence be permanently restrained from interfering with the 1<sup>st</sup> Defendant's possession, occupation including enjoyment of the suit land.

It is against the foregoing that I find that the 1<sup>st</sup> Defendant has proved his case on a balance of probability and will proceed to enter judgement for him as against the Plaintiffs as per the Counterclaim. I will further proceed to make the following final orders:

- i. The Plaintiffs' suit be and is hereby dismissed with costs.

ii. Judgement be and is hereby entered for the 1<sup>st</sup> Defendant against the Plaintiffs for a Permanent Injunction restraining the Plaintiffs, either by themselves or their agents, servants, employees, assigns or any persons acting under their direction or instructions or otherwise howsoever from trespassing and/ or interfering, in any way, with the 1<sup>st</sup> Defendant's ownership, quiet enjoyment, possession and use of Land Reference Number Kajiado/ Kipeto/ 4917.

iii. Costs of this suit and of the Counterclaim is awarded to the Defendants.

**Dated signed and delivered via email this 20<sup>th</sup> day of May, 2020**

**CHRISTINE OCHIENG**

**JUDGE**