



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 76 OF 2018**

**JOSEPH KIBET RONO.....1<sup>ST</sup> PLAINTIFF**

**PAULINA CHEPKORIR RUTO.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**NICHOLAS KIPRUTO CHELULE.....1<sup>ST</sup> DEFENDANT**

**JOSEPH SONGOK.....2<sup>ND</sup> DEFENDANT**

**DAVID KIPKURGAT SONGOK.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs commenced these proceedings through their Plaint dated, and filed on the 2<sup>nd</sup> May 2018, seeking for an order of permanent injunction against the defendants, their agents, servants, relatives and or assignees from trespassing or in any other way interfering with or doing any act which is inconsistent with the Plaintiff's ownership of parcel of land No. **Tulwet/Kesses Block 5 (Cheptiret) 6 and 8** and costs. The Plaintiffs avers that they are the registered proprietors of the two parcels and that on or about 17<sup>th</sup>, the 17<sup>th</sup> February of undisclosed year, the 1<sup>st</sup> Defendant encroached onto the lands and ploughed thereon. That the Plaintiffs protested and during a meeting with the Defendants before village elders, it was agreed the boundaries between the parcels and that of the Defendants Tulwet/Kesses Block 5 (Cheptiret) 4, be re-established by the County Surveyor. That the County Surveyor gave notices and came to the suit lands on the 27<sup>th</sup> April, 2018 but the Defendants blocked the exercise and pulled down the Plaintiffs' 30 boundary posts. The Plaintiffs reported to Cheptiret Police Post under O. B. No. 12/27/4/2018. That the Defendants have threatened to continue ploughing and planting on the suit land, and unless restrained the Plaintiffs are bound to suffer irreparable loss and damages, and hence this suit.

2. The Defendants filed the undated Memorandum of Appearance through **M/s Akenga Kimutai & Associates** on the 14<sup>th</sup> May, 2018 but did not file a statement of defence.

3. During the hearing, **Joseph Kibet Rono**, the 1<sup>st</sup> Plaintiff, testified as PW1. He testified that the Defendants encroached onto his land Tulwet/Kesses Block 5/8, and Tulwet/Kesses Block 5/6 that belongs to the 2<sup>nd</sup> Plaintiff who is his sister on the 17<sup>th</sup> February, 2018. He produced copies of title deeds for the two parcels as exhibits. It is his testimony that the Defendants had uprooted 30 boundary posts from the fence as shown in the three photographs he produced as exhibit. He had reported the matter to the police and on the 17<sup>th</sup> April, 2018, the village elder tried to hear the dispute, but on being unsuccessful he referred him to the Chief who gave him a letter to go to the Land Registrar. The Surveyor did a letter indicating the day to visit the suit land but did not do so. Then this suit was filed through his advocate. That the Court then ordered the Surveyors to visit the land and file a report which they did. The report is dated 7<sup>th</sup> September, 2018 and it has resolved the dispute. That however, the Defendants are still threatening him, and wants them be restrained from interfering with his land and costs.

4. The learned Counsel for the Plaintiffs filed their written submissions dated the 20<sup>th</sup> March, 2020.

5. The issues for the Court's determinations are as follows:

- (a) Whether the Plaintiffs are the registered proprietors of the two suit properties.**
- (b) Whether the Defendants had trespassed onto the said properties.**
- (c) Whether the Plaintiffs are entitled to the prayer of permanent injunction as sought.**

**(d) Who pays the costs of the suit?**

6. The Court has carefully considered the pleadings filed by the Plaintiffs, the oral and documentary evidence tendered by PW1, the written submissions by the learned Counsel for the Plaintiffs, and come to the following findings;

(a) That as pleaded by the Plaintiffs, and confirmed through the oral and documentary evidence in the form of copies of title deeds produced by PW1 as exhibits, the land parcels Tulwet/Kesses Block 5 (Cheptiret) 8 and 6, the suit properties were registered in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff on the 8<sup>th</sup> June, 1995 and 6<sup>th</sup> December, 1994 respectively. That there has been no evidence adduced to challenge or rebut their registration as proprietors. That in terms of **Section 26 of the Land Registration Act No. 3 of 2012**, this Court is obligated to take the person registered on the certificate of title, like the title deeds herein, as the proprietor of the land described herein, as the **“absolute and indefeasible owner**, subject to the encumbrances, easement, restrictions, and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except –

**“(a) on the ground of fraud and or misrepresentation to which the person is proved to be a party; or**

**(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”**

That the Plaintiffs’ titles to the suit properties have not been challenged in the manner aforesaid or at all in this case.

(b) That as the registered properties, the Plaintiffs have all the rights to possess, and take the lands, till and utilize the parcels, without any interferences. That the testimony tendered by the 1<sup>st</sup> Plaintiff and the Surveyor’s Report dated the 7<sup>th</sup> September, 2018 and adopted by the Court confirms that the Defendants had indeed uprooted, and ploughed onto the Plaintiffs’ parcels. That the Surveyor’s report and the testimony of PW1 further confirms that the disputed boundary position was resolved through the Surveyor marking it in the presence of both parties, and the area chief. That it is the hope of the Court that both parties will respect the boundary marks as planted by the Surveyor whose report has been adopted as an order of the Court.

(c) That the Plaintiffs pursued their case to be heard even after the Surveyor’s Report because according to the Plaintiffs, the Defendants continued to threaten to plough and plant on their lands. That **Section 24 of the Land Registration Act** vests absolute rights to the registered proprietor of the land. The Plaintiffs therefore, are entitled to utilize their land as provided for under the law and **Article 40 of the Constitution 2010**, which guarantees property rights of every person either individually or in association with others. The principles guiding the Court in granting an injunction were set down in **Giella Vs Cassman Brown & Co. Ltd (1973) E.A. 358**. That a restraining order was issued on 8<sup>th</sup> February, 2019 stopping the Defendants from interfering with the Plaintiffs’ use of the access road contained in the Surveyor’s Report dated 7<sup>th</sup> September, 2018 that access the suit properties. That since then, the testimony adduced by PW1 has further confirmed that in view of the Defendants’ previous conduct of interfering with the Plaintiffs’ parcels of land, it is only fair and just that they be permanently restrained from so interfering as sought in prayer (a).

(d) That as the interference of the suit properties by the Defendants are what prompted the Plaintiffs to file these proceedings, then the Defendants should pay the costs of the suit under **Section 27 of Civil Procedure Act Chapter 21 of Laws of Kenya**.

7. That from the foregoing, the Court finds that the Plaintiffs have proved their claim against the Defendants on a balance of probabilities. The Court therefore, enters judgment for the Plaintiffs against the Defendants in terms of prayer (a) with costs.

Orders accordingly.

**Delivered virtually and dated at Eldoret this 11<sup>th</sup> day of November, 2020.**

**S. M. KIBUNJA**

**JUDGE**

**In the presence of:**

Plaintiffs: Absent.

Defendants: Absent.

Counsel: Mr. Kariuki for the Plaintiffs

Mr. Akenga for the Defendants

Court Assistant: Christine

and the judgment is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.