



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 57 OF 2012**

PAUL KIPROTICH RUTTOH.....1<sup>ST</sup> PLAINTIFF  
MILKA SOTE.....2<sup>ND</sup> PLAINTIFF  
RACHEL CHESIRE.....3<sup>RD</sup> PLAINTIFF  
SOPHIE SOTE CHEPKWONY.....4<sup>TH</sup> PLAINTIFF  
IRENE CHESIRE.....5<sup>TH</sup> PLAINTIFF  
STELLAH TURERE SOTE.....6<sup>TH</sup> PLAINTIFF  
WINNIE KEMEI.....7<sup>TH</sup> PLAINTIFF

**VERSUS**

ABRAHIM NAIBEI CHESUMBAL.....1<sup>ST</sup> DEFENDANT  
SOLOMON BICHANGA MOFFAT NDEGE.....2<sup>ND</sup> DEFENDANT  
JOSPHAT WANGILA WANYONYI.....3<sup>RD</sup> DEFENDANT  
JOHN K. CHERUIYOT.....4<sup>TH</sup> DEFENDANT  
WILSON KORIR.....5<sup>TH</sup> DEFENDANT  
SILAS KEREMET BUKAN.....6<sup>TH</sup> DEFENDANT  
WILLIAM KIPKEMOI CHEPKWONY.....7<sup>TH</sup> DEFENDANT  
ROBINSON SAKATEKO NYASIMI.....8<sup>TH</sup> DEFENDANT  
JOHN KEMBOI CHEMAGET.....9<sup>TH</sup> DEFENDANT

**JUDGMENT**

1. In the plaint dated 11/4/2012 that was filed on 18/4/2012, the plaintiffs seek the following orders:-

(a) An order of permanent injunction to restrain the defendants by themselves, their servants and or agents from entering, taking possession, trespassing on all those properties known as Title Numbers Kimondo/Kimondo Block 1(Chepsalei) 5, Kimondo/Kimondo Block 1 (Chepsalei) 6 and Kimondo/Kimondo Block 1(Chepsalei) 7, and or from harassing, evicting and or threatening the plaintiffs agents, employees and or from allowing their livestock to graze on the plaintiffs said parcel of land and or carrying out farming activities in the said parcels of land and or in any manner howsoever interfering with the plaintiffs exclusive ownership, use and possession of the said parcels of land.

(b) An order of mandatory injunction compelling the defendants by themselves, their servants and or agents to forthwith

**vacate the said parcel of land and to remove all their equipment and or personal effects dumped and or stored in the plaintiffs parcels of land known as Kimondo/Kimondo Block 1(Chepsalei) 5, Kimondo/Kimondo Block 1 (Chepsalei) 6 and Kimondo/Kimondo Block 1(Chepsalei) 7.**

**(c) Interim orders in respect of prayer (a) and (b) above.**

**(d) Costs of the suit.**

**(f) Such further order which the court may deems fit to grant.**

2. According to the plaint, the plaintiffs' case is that the 2<sup>nd</sup> to 7<sup>th</sup> plaintiffs were beneficiaries of the suit land; that vide an agreement dated **15/12/2010** between the 1<sup>st</sup> plaintiff and the 2<sup>nd</sup> - 7<sup>th</sup> plaintiffs the plaintiff bought **88** acres of land to be carved out of the suit properties at a consideration of **13,200,000/=**; that he paid a deposit of **Ksh 3,000,000/=**; that the balance was to be paid upon successful survey and registration of the suit property in favour of the 1<sup>st</sup> plaintiff; that the property was bought in vacant possession; that a condition in the agreement required the plaintiff to take and remain in possession pending completion of the transfer and he did take possession; that however, without any proprietary interest in the suit land on their part, the defendants trespassed on the suit land between the years **2010** and **2011** and forcefully occupied a portion thereof, subdivided and started farming on the said portion and have wrongfully remained thereon despite demand; that the plaintiff has suffered loss and inconvenience hence the suit.

3. That according to the affidavit of service dated **22/6/2012** filed in court on **15/3/2013**, the 2<sup>nd</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> defendants were served personally. Later, following an order for substituted service, the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> defendants were served by way of an advertisement which appeared in a copy of a local daily published on **8/8/2013**.

4. The defendants in this suit, despite being served with summons, plaint and verifying affidavit, never entered appearance or filed any defence.

5. A written request for judgment against the 1<sup>st</sup> 3<sup>rd</sup>, 4<sup>th</sup> 5<sup>th</sup> and 7<sup>th</sup> defendants dated **30/9/2013** was filed on **4/10/2013**. Another request for judgment against the 1<sup>st</sup> 3<sup>rd</sup>, 4<sup>th</sup> 5<sup>th</sup> and 7<sup>th</sup> defendants dated **24/7/2018** was filed on **9/8/2018**.

6. On **31/10/2018** the plaintiff's counsel applied for an order that interlocutory judgment be entered against the defendants for failure to enter appearance and defence. Judgment was entered against the defendants on the same date and the matter was ordered to proceed to formal proof. The suit proceeded ex-parte against them.

7. At the hearing which took place on **15/11/2018**, **Winnie Kemei**, the 7<sup>th</sup> plaintiff, testified as **PW1** and adopted her written statement filed in court on the **15<sup>th</sup> November 2018**. She stated that the suit land belonged to her late father whose estate she was an administrator pursuant to a Grant of Letters issued in **Nakuru High Court Succession Cause No 1 Of 2007**; that vide a Certificate of Confirmation of grant dated **2/12/2009** she and 2<sup>nd</sup> to 6<sup>th</sup> plaintiffs were vested with the land and that in 2010 they sold **88** acres out of the suit property to the 1<sup>st</sup> plaintiff who paid a deposit and took possession of the suit land. According to her the defendants trespassed onto the suit property sometime between **2010** and **2011**. The plaintiffs had had no dealings with the defendants over the suit land. She produced an original Rectified Certificate of Grant dated in **Nakuru High Court Succession Cause No 1 of 2007**.

8. **PW2 Paul Rotich Rutto**, the 1<sup>st</sup> plaintiff, testified on **21/11/2018**. He adopted his statement filed in court record dated **14/12/2011** as his evidence-in-chief. That statement reiterates the matters pleaded in the plaint. He produced the agreement for sale dated **15/12/2010** and a valuation report apparently prepared in **November 2018** in evidence.

9. The rectified certificate of confirmation of grant dated **1/9/2016** shows that the 2<sup>nd</sup> to 7<sup>th</sup> plaintiffs are beneficiaries to the suit land, entitled to an aggregate of **120** acres. The copies of titles to the suit properties show that the suit land measure **99.93** ha in aggregate, translating into **246.9** acres.

10. This suit is not opposed. I have examined the documentary evidence produced by the plaintiffs and heard their evidence. In my view the plaintiffs have established their case against the defendants on a balance of probabilities.

11. Consequently I hereby enter judgment in favour of the plaintiffs against the defendants jointly and severally and issue the following orders:

**(a) An order of permanent injunction to restrain the defendants by themselves, their servants and or agents from entering, taking possession, trespassing on all those properties known as Title Numbers Kimondo/Kimondo Block 1(Chepsalei) 5, Kimondo/Kimondo Block 1 (Chepsalei) 6 and Kimondo/Kimondo Block 1(Chepsalei) 7, and or from harassing, evicting and or threatening the plaintiffs agents, employees and or from allowing their livestock to graze on the plaintiffs said parcels of land and or carrying out farming activities in the said parcels of land and or in any manner howsoever interfering with the plaintiffs exclusive ownership, use and possession of the said parcels of land.**

**(b) An order of mandatory injunction compelling the defendants by themselves, their servants and or agents to forthwith vacate the said parcels of land and to remove all their equipment and or personal effects dumped and or stored in the plaintiffs parcels of land known as Kimondo/Kimondo Block 1(Chepsalei) 5, Kimondo/Kimondo Block 1 (Chepsalei) 6 and Kimondo/Kimondo Block 1(Chepsalei) 7.**

**(c) The defendants shall bear the costs of the suit.**

**Dated, signed and delivered at Kitale on this 29<sup>th</sup> day of January, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**29/01/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bungei holding brief for Tororey for plaintiffs

N/A for the defendants

**COURT**

Judgment read in open court.

**MWANGI NJOROGE**

**JUDGE**

**29/01/2019**