



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

LAND CASE NO. 174 OF 2017

MGENO RANCHING CO. LTD.....PLAINTIFF

-VERSUS-

DEREVA BEKWEKWE

PATSON MWAKAZI

DANIEL MBOLE

ALIMA WADU

LYDIA MWAKISHUNGI

DELVAN DIDA

HILDA RICHARD

RAEL KISHESHE.....DEFENDANTS

JUDGEMENT

1. By way of a plaint dated 17th May 2017, the plaintiff sued the eight (8) defendants accusing them of trespassing on its parcel of land L. R No 12178 situated within Taita Taveta County. The plaintiff pleaded that the defendants without any colour of right have been since 2013 cultivating portions of the suit land. Despite warnings and demands of legal action issued, the defendants have continued with the aforesaid activities. The plaintiff therefore asks the Court to grant her the following reliefs:

(a) A permanent injunction restraining the Defendants by themselves, their workers and/or, servants, agents, families, hirelings and person(s) claiming right through them from trespassing, cultivating, and/or in any other manner whatsoever, interfering with the plaintiff's parcel land No. LR No 12178.

(b) An interlocutory injunction restraining the Defendants by themselves, their workers and/or servants, agents families, hirelings and person(s) claiming right through them from trespassing, cultivating and/or in any other manner whatsoever, interfering with plaintiff's parcel land No. LR No. 12178 pending the hearing and final determination of this suit.

(c) Any or further order this honourable Court may deem fit and just to grant.

(d) Costs of the suit.

2. The defendants entered appearance in the suit through the firm of Omollo Onyango & Co advocates on 29th June 2017 but did not file a defence within the prescribed time in law and also after being given time by the Court to do so. The plaintiff's suit therefore proceeded to hearing undefended.

3. Mr Ronald Bang'osa testified on behalf of the plaintiff on 27th September 2018. He relied on his witness statement dated 17th May 2017 and filed on 18th May 2017 together with the documents contained in the list dated 17th May 2017. PW 1 testified that the defendants reside in the neighbourhood. That the defendants have been trespassing on their land by cultivating portions of it. PW 1 stated further that sometimes in 2015, they caused the defendants to be arrested and charged in Voi RM Criminal case No 956 of 2015 but which case was

withdrawn following the intervention of the area Chief and MCA on the assurance that the defendants would not trespass on the ranch again.

4. PW 1 continued that the plaintiff was surprised when sometimes in March 2017, the defendants moved into the ranch again and began tilling in readiness for planting. That apart from being illegal, the defendants' activities put on them a lot of strains as they find themselves under a duty to keep their cattle from grazing on the cultivated portion. In support of the claim, the plaintiff produced a certificate of title for the suit land showing the plaintiff as the registered owner. PW 1 also produced a demand letter dated 17th September 2016 addressed to some of the defendants and a copy of the charge sheet in criminal case No 956 of 2015. He urged the Court to grant the orders sought.

5. In brief submissions dated 18th October 2018, the plaintiff submitted that their case is merited because;

(i) The defendants had been called upon through the letter dated 17th September 2015 to stop trespassing on the suit land but has not adhered to the call.

(ii) That from the copy of the charge sheet, the defendants had even been arrested and charged.

6. I have analysed the pleadings filed and the evidence presented by the plaintiff which have not been contested by the defendants. From the pleadings & the evidence, the plaintiff has explained the nature of trespass being undertaken by the defendants i.e. cultivating portions of the suit land. The plaintiff has also shown that she is the registered owner of the suit land. That the acts of trespass complained have been repeated by the defendants at various points in time.

7. Under the provisions of section 25 of the Land Registration Act, a registered proprietor is entitled to quiet and exclusive possession of his land. Where any party wishes to challenge such a right then the Act permits him/her to do so under section 26 thereof. In the instant case, the defendants did not bother to file a defence to deny the allegations of trespass levelled against them. Nothing has been presented to this Court to justify their cultivation of the suit land. It is only prudent that the Court does issue orders that would bar them from engaging in the acts of trespass which acts are an infringement of the plaintiff rights under article 40 of the Constitution and section 25 of the Land Registration Act. Accordingly I am satisfied that the plaintiff has proved her case and hereby enter judgment for her as prayed in the plaint.

Dated, signed & delivered at Mombasa this 12th February 2019

A. OMOLLO

JUDGE