



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 162 OF 2008

NKURU OLE TORIS.....1ST PLAINTIFF/APPLICANT

KAKUNYI OLE MUNYIS.....2ND PLAINTIFF/APPLICANT

=VERSUS=

NALONGOYO MUNYEI.....1ST DEFENDANT/RESPONDENT

HON. ATTORNEY GENERAL.....2ND DEFENDANT/RESPONDENT

JUDGEMENT

1. The plaintiffs have filed this suit against the defendants jointly and severally for:-

(a) That the 1st and 2nd defendant herein be ordered to withdraw/lift the restriction forthwith.

(b) That the plaintiffs herein be declared as the only joint owners to parcel title No. Kajiado/Ewaso Kedong/1367.

(c) Costs of this suit.

(d) Any other relief that the honourable court may deem fit and just to grant.

2. Upon being served with copies of plaint and summons to enter appearance the 1st defendant neglected and/or refused to enter appearance and/or put in a defence within the prescribed period. The 2nd defendant filed a statement of defence on 13th June 2008 to which the plaintiff filed a reply dated 18th August 2008.

3. On the 7th April 2016 the matter proceeded exparte. PW1, Nkaru Ole Toris told the court that he is a joint owner of the suit property. That the 1st defendant has prevented them from sub dividing the land by asking the Land Registrar to place a restriction on the title. He produced the title deed as exhibit P1, a letter in reply to his complaint as exhibit P2, two letters as exhibit p3, p4. He also produced a certificate of official search dated 24th September 2010 as exhibit p5 and the one dated 31st July 2012 as exhibit p6. Letters from the Assistant Chief as exhibit p7, p8. The told the court that it is their wish to sub divide the land. He prays that the 1st defendant be compelled to remove the restriction.

4. I have considered the pleadings and the evidence on record. The plaintiffs' case is uncontroverted. From the title deed produced as exhibit p1. It is clear that the plaintiffs and the 1st defendant are registered as joint proprietors of the parcel of land known as Kajiado/Ewaso Kedong/1367. This is supported by the certificate of official search produced as exhibit p6. The said certificate of official search exhibit p6 and a letter by the then District Land Registrar Kajiado (Exhibit P4) confirm that there is a restriction placed on the said title. It is also not in doubt that the said restriction has been in place for more than eighteen (18) years.

5. Upon being served, the 1st defendant neglected and/or refused to come to this court to justify the placing of the said restriction. The plaintiffs' claim is undefended.

6. I have gone through the prayers in the plaint and I find that here is no such prayer for damages and/or compensation. Parties are bound by their pleadings. Besides the restriction was placed by the 2nd defendant upon application by the 1st defendant. I find that this prayer must fail.

7. All in all I find that the plaintiffs are entitled to be registered and be issued with title deeds for their respective shares of the suit land. I find that they have proved their case against the defendants on a balance of probabilities.

8. I enter judgment in their favour as follows:-

(a) That the 1st and 2nd defendants herein are hereby ordered to withdrawn and/or lift the restriction placed on LR NO. Kajiado/Ewaso Kedong/1367 forthwith

(b) That a declaration be and is hereby issued that the plaintiffs and 1st defendant are joint owners of LR No Kajiado/Ewaso Kedong/1367.

(c) That the plaintiffs do have costs of the suit and interest.

It is so ordered.

Dated, signed and delivered in Nairobi on this 27TH day of MARCH 2019.

.....

L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the 1st & 2nd Plaintiffs

.....Advocate for the 1st & 2nd Defendants

.....Court Assistant