



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO.72 OF 2017**

**(FORMERLY MACHAKOS ELC NO. 235 OF 2010)**

**OL KASASI LIMITED.....PLAINTIFF**

**VERSUS**

**MOSES KIRRUTI LEMPASO.....DEFENDANT**

**JUDGEMENT**

By a Plaint dated the 8<sup>th</sup> November, 2010, the Plaintiff prays for judgement against the Defendant for:

- a. A permanent injunction restraining the Defendant, his employees, servants or agents or any person claiming through or acting through or under him from entering, trespassing or interfering in any way with the said land parcels L.R Nos. Kajiado/ Kitengela/ 27302; Kajiado/ Kitengela/ 27303; Kajiado/ Kitengela/ 2704; and Kajiado/ Kitengela/ 27305 or with the Plaintiffs employees, servants or agents carrying on any work therein.
- b. Costs of this suit with interest at the Court rates.
- c. Any other or such relief as this Honourable Court may deem fit and just to grant.

The Defendant although duly served with the summons to enter appearance on the 29<sup>th</sup> November, 2010 as evidenced by the affidavit of service filed on the 15<sup>th</sup> December, 2010 entered appearance but failed to file a Defence.

The Plaintiff sought for interlocutory judgement on 29<sup>th</sup> January, 2015 which was entered on 4<sup>th</sup> February, 2015 after which the matter proceeded for formal proof where the Plaintiff only called one witness.

**Evidence of the Plaintiff**

The Plaintiff is the proprietor of land parcels numbers KAJIADO/ KITENGELA/ 27302; KAJIADO/ KITENGELA/ 27303; KAJIADO/ KITENGELA/ 27304; and KAJIADO/ KITENGELA/ 27305 which parcels of land collectively measure 50 acres. The Defendant owns an adjacent parcel of land parcel number KAJIADO/ KITENGELA/ 12922. The Defendant has interfered with the Plaintiff' peaceful enjoyment of its land by threatening to trespass and graze his cattle thereon. The Defendant has attempted to fraudulently dispose of the Plaintiff's parcels of land and removed the beacons that indicated the boundary between his land and the Plaintiff's. In 2010, the Plaintiff's directors visited the parcels of land together in the company of a surveyor with the intention of restoring the beacons but the Defendant confronted the said directors including the surveyor and frustrated the exercise by threatening physical violence against them. The Defendant has persisted in threatening the Plaintiff's directors with violence and this has made it impossible for them to access their parcels of land. Further, sometime in 2012, PW1 together with one David Gichumbi Njoroge (deceased) in the company of Police officers assigned by the District Commissioner Isinya, visited their parcels of land with the intention to put up beacons and evict any trespassers but the Defendant accompanied with armed youths confronted them and frustrated their efforts to place the beacons on their land. It was the Plaintiff's case that as a result of the Defendant's actions, they have been unable to develop the said parcels of land. The Plaintiff's witness produced the respective Certificates of Title and Certificate of Incorporation of the Plaintiff.

The Plaintiff closed their case and filed submissions that I have considered.

**Analysis and Determination**

Upon consideration of the materials filed in respect of the suit herein and considering testimony from the Plaintiff's witness, the following are the issues for determination:

- Whether the Defendant, his employees, servants or agents or any person claiming through or acting through or under him should be restrained from entering, trespassing or interfering in any way with the said land parcels L.R Nos. Kajiado/ Kitengela/ 27302; Kajiado/ Kitengela/ 27303; Kajiado/ Kitengela/ 27304; and Kajiado/ Kitengela/ 27305.
- Who should bear the costs of the suit.

As to Whether the Defendant, his employees, servants or agents or any person claiming through or acting through or under him should be restrained from entering, trespassing or interfering in any way with the said land parcels L.R Nos. Kajiado/ Kitengela/ 27302; Kajiado/ Kitengela/ 27303; Kajiado/ Kitengela/ 27304; and Kajiado/ Kitengela/ 27305. PW1 testified that the Plaintiff which is a registered company was the proprietor of land parcels numbers Kajiado/ Kitengela/ 27302; Kajiado/ Kitengela/ 27303; Kajiado/ Kitengela/ 27304; and Kajiado/ Kitengela/ 27305. It was his testimony that the Defendant who owns the adjacent parcel of land had interfered with their peaceful enjoyment of the same by denying them access to; blocking its directors and surveyor to access their parcels of land to replace the beacons he had removed and using armed youths to deny them access to their lands. It was his evidence that the Defendant has illegally attempted to sell their land to third parties and threatened to graze thereon. All these evidence was not controverted by the Defendant who failed to file a Defence despite being duly served. Section 25 and 26 of the Land Registration Act provides that: **' (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject— (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register. (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee. 26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, 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 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.'**

In the case of Ahmed Ibrahim Suleiman and another –vs- Noor Khamis Surur (2013) eKLR Justice Mutungi held that a party holding title to a parcel of land is entitled to protection of the law. In being persuaded by this case and relying on the above cited legal provision, since the Plaintiff's titles to the aforementioned parcels of land was not challenged by the Defendant, I hold that the Certificates of title produced in court as prima facie evidence of ownership. Further that the Plaintiff being the registered proprietor of the said parcels of land is the indefeasible owner; and hence entitled to all privileges as well as appurtenances belonging thereto, free from all other interests and claims whatsoever.

It is against the foregoing that I find that the Defendant including, his employees, servants or agents or any person claiming through or acting through or under him should be restrained from entering, trespassing or interfering in any way with the said land parcels L.R Nos. Kajiado/ Kitengela/ 27302; Kajiado/ Kitengela/ 27303; Kajiado/ Kitengela/ 27304; and Kajiado/ Kitengela/ 27305.

As to who should bear the costs of the suit. Since the Plaintiff has been inconvenienced by the actions of the Defendant, I will award it the costs of this suit.

In the circumstances, I find that the Plaintiff has proved its case on a balance of probability and proceed to enter judgement in its favour as against the Defendant in the following terms:

- a. A permanent injunction be and is hereby issued restraining the Defendant, his employees, servants or agents or any person claiming through or acting through or under him from entering, trespassing or interfering in any way with the said land parcels L.R Nos. Kajiado/ Kitengela/ 27302; Kajiado/ Kitengela/ 27303; Kajiado/ Kitengela/ 2704; and Kajiado/ Kitengela/ 27305 or with the Plaintiffs employees, servants or agents carrying on any work therein
- b. Costs of this suit is awarded to the Plaintiff.

**Date signed and delivered in open court at Kajiado this 24th day of April, 2019.**

**CHRISTINE OCHIENG**

**JUDGE**