



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 174 OF 2013

DAVID LOKUI LOSILI.....PLAINTIFF

VERSUS

FRANCIS MNAGAT MADAA.....1ST DEFENDANT

EMMANUEL RUTO BIWOTT.....2ND DEFENDANT

SHADRACK ROTICH.....3RD DEFENDANT

GEOFFREY PIRO LOPETAMUK4TH DEFENDANT

MOSES PTERER MADAA.....5TH DEFENDANT

ELIUD KROP MADAA.....6TH DEFENDANT

ENOCK PSINEN KAPTUM.....7TH DEFENDANT

JUDGMENT

1. The plaintiff's claim is contained in the plaint dated 27/11/2013 which was filed on the 19/12/2013. In that plaint, he seeks the following orders against the defendants jointly and severally:-

(a) A declaration that the plaintiff is entitled to the exclusive and unimpeded right of use, possession and occupation of all that parcel of land comprised of Title No. West Pokot/Chepareria/282.

(b) An order of exhumation of the dead body and a permanent injunction restraining the defendants from trespassing, claiming, accessing, interring or in any other manner whatsoever interfering with and/or dealing with the suit land.

(c) General damages for trespass.

(d) Cost.

(d) Any other relief this court may deem appropriate to grant.

2. The plaintiff's case is that he is the registered owner of parcel No. **West Pokot/Chepareria/282** measuring 1.1 Hectares and he was in such peaceful possession of the land until **17th October, 2012** when the defendant their agents and servants forced their way in the land, trespassed thereon and interred the body of one **Michael Kibet Biwott** thereon. He avers that he has no relation by blood or marriage with the deceased at all. Thereafter the defendants were charged with an offence in **Kapenguria Criminal Case No. 1137 of 2012**. He avers that the interment of the remains of the deceased on the said property has deprived him of quiet and peaceful enjoyment of the said property and he has suffered loss and damages the particulars whereof are outlined in paragraph 7 and 8 of the plaint hence this suit.

3. The defendants never filed any memorandum of appearance or defence despite being served with summons and plaint and other documents on **20/1/2014** as is evidenced by the affidavit of service sworn by one **Archibald Wekesa Nyukuri** filed on **26/2/2014**. From the contents of that affidavit of service I am satisfied that the defendant were duly served.

4. A request for judgment was filed on **26/2/2014** after the defendants failed to enter appearance or file defence within the requisite period.

5. This suit proceeded to formal proof on **8/4/2019**. The plaintiff alone testified at the formal proof. He adopted his statement dated 10/2/2014 as his evidence-in-chief in this suit. He reiterated the contents of his plaint and produced documentary evidence in support of his case.

6. The plaintiff produced the original title to the suit land as **P. Exhibit 3**. He also produced agreements dated **2/2/1998** and **28/2/1999** respectively showing that the land was sold to him by both **Michael K. Biwott** and his father **Kaptum Paech**. Michael was selling his inheritance in the land while Kaptum Paech was selling his own parcel in his right as a principal proprietor.

7. Subsequent to the agreements, the parties appear to have applied for a Land Control Board's consent to transfer which was issued on the **17/4/2002**. The consent dated 19/4/20102 and issued on 17/4/2002 was produced as **P. Exhibit 2** and the undated application for a consent is attached to that letter of consent. The green card or copy of register duly certified by the District Land Registrar Trans-Nzoia/West Pokot was produced as **P. Exhibit 4**. A copy of official search was produced as **P. Exhibit 5**. All those documents show that the plaintiff is the registered owner of the suit land.

8. The plaintiff denies that he gave the defendant authority to inter the remains of Michael K. Biwott on the suit land. He produced the judgment in **Kapenguria Criminal Case No. 1137 of 2012** in which the 7 defendants were convicted of forcible entry into the land and sentenced to a fine of Kshs.7,000/= each and in default ten months imprisonment.

9. I have considered the evidence of the plaintiff and the documentary evidence on the record as well as the contents of the plaint. The evidence of the plaintiff was not controverted. The case went unopposed. In my view the plaintiff has established his case against the defendants on a balance of probabilities. I therefore enter judgement in favour of the plaintiff against the 7 defendants herein and I issue the following orders:

(a) A declaration that the plaintiff is entitled to the exclusive and unimpeded right of use, possession and occupation of all that parcel of land comprised of Title No. West Pokot/Chepareria/282.

(b) An order that the defendants shall under the supervision of the Public Health Office, West Pokot County conduct the exhumation of the dead body they buried on the suit land for interment at a public cemetery or elsewhere as may directed by the Public Health Officer.

(c) A permanent injunction restraining the defendants from trespassing, claiming, accessing, or in any other manner whatsoever interfering with and/or dealing with the suit land.

It is so ordered.

Dated, signed and delivered at Kitale on this 13th day of May, 2019.

MWANGI NJOROGE

JUDGE

13/5/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the parties

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

13/5/2019