



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 348 OF 2017

FORMELY KISII ELC CAUSE NO. 726 OF 2016

MOSES LEMASHON KORINKO.....PLAINTIFF

-VERSUS-

DANIEL LEKILABU.....DEFENDANT

JUDGEMENT

The suit herein was commenced by way of a Plaint dated 6th February, 2012 in which the Plaintiff sought for the following orders: -

- (i) Declaration that the Plaintiff is the registered and/or lawful owner of LR NO. TRANS-MARA/SHARTUKA/774.
- (ii) Permanent injunction restraining the Defendant either by himself, agents, servants and/or anyone claiming under the Defendant from entering upon, re-entering, trespassing onto cultivating, building structures, interfering with and/or in any other manner dealing with the suit land, that is LR. NO. TRANS-MARA/SHARTUKA/774 and/or any portion thereof.
- (iii) General damages for trespass
- (iv) Interest at court rates
- (v) Costs of the suit be borne by the Defendant
- (vi) Such further and/or other relief as the court may deem fit and expedient to grant.

It is the Plaintiff's averment that at all material times to the suit herein he was the registered owner of Land Parcel No. TRANS MARA/SHARTUKA/774 measuring about 4.05ha which land was formerly part of Shartuka Group Ranch and that he has been in occupation and possession of land. The Plaintiff contends that on or about October, 2011 the Defendant trespassed on the land and deprived the Plaintiff the right to enter and use the land.

The Defendant filed a statement of defence dated 29th March, 2012 in which he denied having knowledge of the Plaintiff's ownership of the suit land and further that he had no knowledge of the process of the demarcation of the land and its allocation thereof to the Plaintiff.

The Defendant further stated that he is the owner of Land Parcel No. Trans Mara/Shartuka/936 which was allocated to him upon the dissolution of the Shartuka Group Ranch and he denies that he ever trespassed on the suit land.

The matter proceeded for hearing on 31st January, 2018. The Plaintiff testified and he stated that he is the registered owner of the suit land which was registered in his name upon the demarcation of adjudication of Shartuka Adjudication Section and he has been in possession of the land and that the Defendant has without his authority trespassed on the suit land.

In his testimony the Plaintiff produced a certificate of title in respect of Land Parcel Trans Shartuka/774.

The Defendant also testified and he stated that he is the owner of Land Parcel Trans Mara/Shartuka/936 and he was a previous member of the Shartuka Group Ranch. He produced a copy of title to Land Parcel Trans Mara/Shartuka/936 he stated that he did not encroach or trespass on the Plaintiff's Parcel of Land. He further stated that when the Plaintiff sued him he went to the land office and found out that the Plaintiff owned Land Parcel Trans Mara/Shartuka/774.

At the close of hearing the parties jointly requested that the court do order the Land Registrar to visit the suit land and determine whether land parcel Trans Mara/Shartuka/774 and Trans Mara/Shartuka/936 do exist and to determine whether both titles are valid and not cancelled and pursuant to the above the Registrar filed a report dated 26th October, 2018 in which he stated that the ground evidence showed that the Defendant had fenced off all the land belonging to the Plaintiff and that Land Parcel Trans Mara/Shartuka/774 belonged to the Plaintiff whereas Trans Mara/Shartuka/936 does not exist. He went to further state that the latter was cancelled through Court order issued in respect of Miscellaneous Civil Application No. 103 of 2003 at Kakamega High Court and also Miscellaneous Civil Application No. 52 of 2009 at Kisii High Court.

Having considered the pleadings before me, the witness testimony together with the submissions the issues for determination are:-

- (i) Whether the Plaintiff is the registered owner of the suit land
- (ii) Whether the Plaintiff is entitled to the orders sought

From the testimony of the witness the Plaintiff contends that he is the registered owner of the suit land which is Land Parcel Trans Mara/Shartuka/774 which he states was allocated to him pursuant to the demarcation and adjudication of Shartuka Adjudication Section. He has produced a certificate of title to the land which was issued on 10th August, 2000. The Defendant contends that he is the owner of Land Parcel Trans Mara/Shartuka/936. The Defendant does not dispute the existence of the Plaintiff's title. The report from the Land Registrar confirmed that Land Parcel No. Trans Mara/Shartuka/936 does not exist on the ground and moreover the title in respect of the above land was cancelled by a court order in Miscellaneous Application No. 103 of 2003 at Kakamega High Court.

In view of the above I find and hold that the Plaintiff has proved his case on a balance of probability and is thus the owner of Land Parcel No. TRANS MARA/SHARTUKA/774.

On general damages I find that the Plaintiff has not proved that the Defendant had trespassed on the land and had used the same for his own appropriation.

Having considered the pleadings and the testimony I thus enter judgement for the Plaintiff against the Defendant in the following terms:-

- (i) That a declaration do issue that the Plaintiff is the registered and lawful owner of L.R. NO. TRANS MARA/SHARTUKA/774
- (ii) That the cost of the suit to the plaintiff

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **24th** day of **July, 2019**

Mohammed Kullow

Judge

24/7/19

In the presence of:

Ms Adala for Ogutu for the Plaintiff

Mr. Bigogo for the Defendant

CA:Chuma