



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L CAUSE NO. 121 OF 2016

THOMAS KIPROTICH KIGEN.....PLAINTIFF

VERSUS

JULIUS KIPSANG CHEBET.....1ST DEFENDANT

DANIEL KIPRUTO CHEBIL.....2ND DEFENDANT

KOITOROR FARM LTD.....3RD DEFENDANT

JUDGMENT

By a plaint dated 16th May, 2016 the Plaintiff herein sued the Defendants jointly and severally seeking for the following orders:

- a) Parcel No. KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174 belongs to the plaintiff and the registration of the 1st defendant's name against the title be registered in the name of the plaintiff.
- b) The particulars contained in the 3rd defendant's register be rectified by striking out the name of the 2nd defendant and the plaintiff's name be inserted on the parcel No. KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174.
- c) An order of injunction do issue barring the 2nd defendant or any other person claiming through him from interfering with the plaintiff's right over parcel No. KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174.
- d) An order of eviction do issue removing the 2nd defendant from using part of parcel No. KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174.
- e) Further or other relief as this Honourable court may deem fit to grant.

This matter had proceeded ex parte and a judgment delivered on 14th December 2017 but the same was set aside by consent on 10th July 2018 to allow the defendants to file their defences upon payment of thrown away costs.

The 1st defendant filed a statement of defence and counterclaim dated 17th July, 2019 while the 2nd Defendant neither entered appearance nor filed a defence. The 3rd Defendant filed its defence dated 11th January, 2019.

The 1st defendant in his counterclaim sought for the following prayers against the plaintiff:

- a) A declaration that JULIUS KIPSANG CHEBET is the legitimate owner of KOITOROR/TUIYOLUK BLOCK I(KOITOROR) 174.
- b) An eviction order to issue against the Defendants, their agents and / or servants from entering, occupying, selling, transferring, encumbering, wasting and/or otherwise interfering with the plaintiff's quiet possession, use and / or enjoyment of the suit land to the detriment of the plaintiff's right as the proprietor of the same.
- c) A permanent injunction restraining the Defendants, their agents and/ or servants from interfering with or in any other way dealing with the suit property to the detriment of the plaintiff as the proprietor of the same.
- d) Costs and interest of the suit.

e) Any other relief this Honourable Court may deem fit and just to grant.

PLAINTIFF'S CASE

PW1 adopted his witness statement filed in court and stated that he had sued the 1st defendant because the 1st defendant's name was inserted in the Koitoror Farmers register by mistake. It was his evidence that he purchased land parcel No. LR.No. 10346 together with other persons which was later subdivided and converted from leasehold to freehold and registered in the names of the members of Koitoror Farm Ltd. It was further his evidence that the suit land that is registered in the name of the 1st defendant is supposed to be registered in his name as he stays on the suit land. PW1 further indicated that Koitoror Company the 3rd defendant herein caused the entire land to be subdivided and his brother Daniel Kipruto who is the 2nd defendant was allocated parcel of land No. KOITOROR/TUIYOLUK BLOCK 1(KOIIYOROR)173 measuring 1.78 hectares but when the title deed was issued to him it showed that the land measured 3.56 hectares which was not the position on the ground. He stated that he has stayed on the suit land for over 40 years.

PW1 further testified that the 2nd defendant took 10 acres instead of 5 acres and that the Land Registrar asked him to appear at the land's registry vide a letter dated 17/2/17 but he did not attend. He produced the said letter as exhibit No. 1. PW1 also produced a letter whereby the Land Registrar rectified the register dated 6/8/15 as exhibit No.2. The plaintiff further produced a copy of the register and a green card abstract as exhibits Nos. 3 & 4 respectively. It was his evidence that the 2nd defendant claimed 10 acres thereby encroaching on his suit land. He therefore prayed for judgement to be entered against the defendants as prayed in the plaint.

On cross examination by Mr. Tororei for the 1st defendant, PW1 stated that he purchased shares from Koitoror Farmers Ltd and that the money was paid for by his uncle who did not give him the payment receipts. He also confirmed that he was not present when the members' register was opened and that the subdivision was completed in 1979.

PW1 also stated that the area list indicated that plot No. 173 measures 1.78Ha and that the registered owner as at 3/11/03 was the Government of Kenya.

Further on cross examination by Counsel, PW1 told the court that he did not know that members were given an opportunity to raise objections before the final register was taken to the lands' registry for titling and that it is not true that the land was purchased by the plaintiff's father.

On cross examination by Ms. Koech for the 3rd defendant, the plaintiff reiterated his evidence and testified that the farm register was never rectified to reflect the true position on the ground. He also confirmed that plot Nos 174 and 190 are not adjacent to each other. The plaintiff further stated that there was an anomaly in the register which he reported in 1979.

On reexamination by Miss Tum the plaintiff stated that he does not know the exact dates when the survey was carried out but that there are beacons on the parcel that he is in occupation of. He also confirmed that he reported the matter to the farm committee for rectification and that it is the same register that the 1st defendant used to acquire his title.

PW 2 one John Cheruyiot adopted his statement which corroborated the plaintiff's evidence that he has been in occupation of the suit land.

On cross examination by Mr. Tororei Counsel for the 1st defendant, PW2 stated that he is also a member of Koitoror farm and has a title deed which was issued as per the farm register. He further confirmed that objections were filed by members who were not satisfied and the same were heard and determined. He also stated that he is a neighbor of the 1st defendant who occupies plot No 190 and that people were allocated land where they were already in occupation of.

On further cross examination by Ms. Koech for the 3rd defendant he stated that he bought 10 acres but was reduced to 5 acres due to the fact that the land was not enough for everyone. PW2 further stated that the 1st defendant resides on plot No. 190 and has never stayed on plot No. 174.

PW3 Saulo Kebenei testified and supported the plaintiff's case having been a member of Koitoror Farm Ltd. He stated that the plaintiff and the 2nd defendant were allocated 10 acres but they were to get 5 acres each and that the 1st defendant does not live on the suit land as it is the plaintiff who has been in occupation since 1976. That the 1st defendant stays on plot No. 190.

On cross examination he stated that the plaintiff and the 2nd defendant were to share 10 acres equally. That was the close of the plaintiff's case.

1ST DEFENDANT'S CASE

DW1 adopted his witness statement and stated that he has a title deed for 4.4acres which he purchased from Koitoror Farmers Ltd. DW1 also stated that he occupies plot No. 190 and that the plaintiff occupies plot No. 174.

On cross examination DW1 confirmed that he is a member of Koitoror farm but does not have a receipt to show the same. He confirmed to the court that the plaintiff is a member of Koitoror farm and that he occupies plot No 174 and that he occupies plot No 190 but holds a title deed for plot no. 174.

DW 1 further informed the court during cross examination that members were allocated the parcels that they were residing on and that he is

supposed to be given plot No 190 and the plaintiff plot No. 174 which he resides on. It was further his evidence that the plaintiff has not encroached on plot No. 174 as the two plots are not adjacent to each other.

DW1 also confirmed that there was a mistake in the plot Nos. and that he has no problem with the rectification of the title deeds as the plaintiff has stayed on the suit plot for many years. He also stated that he got his title deed in 2016 while the case was pending before the court. DW1 stated that no one has claimed plot No. 190 which he has occupied for over 42 years and prayed that the register be rectified so that he can get the title to his land.

DW2 the Land Registrar testified and confirmed that the registered owner of plot No. 174 is the 1st defendant. She also stated that the registered owner of plot No. 190 is Beatrice Kipkurgat who is deceased and that the members register was availed to the lands office on 7/10/02. She further stated that the list is prepared by the officials of the farm and approved before it is filed with the lands office.

DW2 further stated that she was not aware that there was a dispute in respect of plot Nos 174 and 190. The Land Registrar confirmed to the court that the officials of the farm have powers to amend the register before it is availed to the lands office of which this power ceases after submission. That the 1st defendant was registered in 2016 as per the members register.

On cross examination by Miss Tum Counsel for the plaintiff, DW2 confirmed that they got a letter from the farm officials for rectification and amendment of the register. She also confirmed that when there is a dispute they do not issue titles until the dispute is resolved. It was her evidence that they were not aware of the dispute in court and that the title to the 1st defendant was issued while this case was pending in court in 2016. It was further DW2's testimony that the directors of the farm can convene a meeting with minutes to amend the register and that she was not aware that there was an order from the court barring registration.

On further cross examination by Miss Koech Counsel for the 3rd defendant DW2 confirmed that she would not have a problem with rectification if she receives a court order directing the same. The 1st defendant therefore closed his case.

The 2nd defendant neither entered appearance nor filed a defence therefore his case was also closed.

3RD DEFENDANT'S CASE

DW3 Phillip Kipserem a Director of the Farm adopted his statement and stated that there was a mistake and an error on the register whereby they wrote the name of the 1st defendant on parcel No. 174 which belongs to the plaintiff. He produced the area list and that when they realized that there was a mistake they tried to convene a meeting but the matter was already at the lands office and this case was also pending before the court. He therefore urged the court to allow the rectification of the register as the plaintiff stays on plot No. 174 and the 1st defendant stays on plot No. 190.

On cross examination DW3 confirmed that they allocated land as per where the members were in occupation of on the ground and they were to be issued with title deeds as such. That the plaintiff has not trespassed on plot No. 174 and that they had not given the 1st defendant clearance to pick the title deed as they had raised a complaint with the Land Registrar. He stated that rectification must be done as there was an error from the word go. That was the close of the 3rd Defendant's case.

PLAINTIFF'S SUBMISSION

Counsel for the plaintiff listed 4 issues for the courts determination as follows:

- a) Whether Parcel Number Koitoror/Tuiyoluk Block I(Koitoror)174 belongs to the Plaintiff and the register ought to be rectified.
- b) Whether the Plaintiff is entitled to an order of cancellation of the defendant's title registered on 17th September, 2016
- c) Whether Orders of Permanent Injunction and Eviction Ought to be Issued Against the 2nd Defendant From Claiming or Using Part of Parcel Number Koitoror/Tuiyoluk Block I(Koitoror)174.
- d) Whether the 1st Defendant Has Proven His Claim of Trespass and an Order Eviction and Permanent Injunction Against the Plaintiff.

Whether Parcel Number Koitoror/Tuiyoluk Block I(Koitoror)174 belongs to the Plaintiff and the register ought to be rectified.

On the first issue Counsel submitted that the Plaintiff together with other persons purchased land L.R.No. 10346 which was later subdivided and converted from leasehold to freehold and registered into the names of it's members. That the Plaintiff's parcel became KOITOROR/TUIYOLUK BLOCK I (KOITOROR) 174 but the said parcel was registered in the name of the 1st Defendant in the Members Register. It was the Plaintiff's evidence that he has been living on the said parcel of land from the 1970's and that the 1st Defendant has his own parcel being KOITOROR/TUIYOLUK BLOCK I (KOITOTOR) 190 which he is in occupation of.

Counsel further submitted that the plaintiff's witnesses together with the 1st defendant confirmed that the plaintiff is a member of the farm and he has been in occupation of plot No 174 while the 1st defendant on plot No. 190 for over 40 years.

Miss Tum also submitted that the Plaintiff's claim was corroborated by the Farm Directors. DW 3 PHILIP KIP SEREM MUGUJN who admitted that indeed there was a mistake as against Parcel No. KOITOROR/TUIYOLUK BLOCK I (KOITOROR) 174 which the 1st Defendant also confirmed that there was a mistake because his parcel is No. KOITOROR/TUIYOLUK BLOCK I (KOITOROR)190 whereas he has a title to parcel No.KOITOROR/TUIYOLUK BLOCK I (KOITOROR)174. That the 1st defendant was also of the view that the register should be rectified.

Counsel also reiterated the evidence of DW2 the Land Registrar who produced the Members Register and confirmed that Plot No. KOITOROR/TUIYOLUK BLOCK 1.(KOITOROR)174 is in the name of JULIUS KIPSANG CHEBET.

Miss tum submitted that DW2 the land Registrar on cross examination confirmed that a letter had been written confirming that there was a dispute on Plot No. KOITOROR/TUIYOLUK BLOCK I (KOITOROR)174. She also stated that once the Register is forwarded to the Land's Office, the same cannot be amended unless it's done by court or by a special meeting of the directors. She also stated that if there is a mistake in the register the same can be corrected.

Counsel therefore submitted that from the evidence adduced, it is clear that there was an apparent mistake in the Members Register whereby the Plaintiff's name was omitted in Parcel No. KOITOROR/ TUIYOLUK BLOCK I (KOITOROR)174 which he owns.

Whether the Plaintiff is entitled to an order of cancellation of the 1st defendant's title registered on 17th September, 2016

On the second issue Counsel submitted that the plaintiff has adduced evidence that there was a mistake on the register and he is entitled to an order of cancellation of the 1st defendant's title which was registered while this case was pending before the court. That the 1st defendant was served with summons and he rushed to the Land's Office and took advantage of the mistake and had the title issued in his name.

Whether orders of permanent injunction and eviction ought to be issued against the 2nd Defendant from claiming or using part of parcel No. Koitoror/Tuiyoluk Block I(Koitoror)174.

On the third issue Counsel submitted that the Plaintiff is a brother to the 2nd Defendant DANIEL KIPRUTO CHEBII whose parcel of land is plot No.KOITOROR/TUIYOLUK BLOCK I (KOITOROR)173. That on the ground, the land measures One Decimal Seven Eight (1 .78) Hectares but it was erroneously shown that it measured Three Decimal Five Six (3.56) Hectares. That the Plaintiff lodged a complaint to the County Land Registrar who then summoned the 2nd Defendant to bring the title deed for rectification. The letter of summons is dated 17th February, 2015 and was produced as exhibit. Further that the Land Registrar thereafter amended the register in their custody and the area list and survey map to reflect that the 2nd Defendant's land is One Decimal Seven Eight (1 .78) Hectares which was confirmed by the Registrar's letter dated 6th August, 2015 which was produced as an exhibit.

Counsel therefore submitted that the Plaintiff has proved that he is entitled to the prayer that 2nd Defendant be evicted from occupation of the Plaintiff's parcel and a permanent injunction be issued against the 2nd Defendant who has taken advantage of the error anomaly to put in claim and occupation of the plaintiff's parcel of land.

Whether the 1st Defendant has proven his claim of trespass and an order eviction and Permanent Injunction against the Plaintiff.

On this issue Counsel cited Clerk & Lindsell on Torts, Sweet & Maxwell, 18th Edition at Pg.923 Trespass to land is defined as follows:-

"Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another"

Counsel submitted that it is clear from the evidence presented by the Plaintiff, the witnesses and the 1st defendant that the plaintiff took possession of land in the 1970's and has been using it for Forty (40) years and therefore not a trespasser.

Section 107(1) of the Evidence Act, Cap 180 Laws of Kenya provides that:-

"Whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist Counsel submitted that the 1st Defendant has failed to satisfy the court that he was in possession of the land and has therefore failed to prove as per Section 107 (1) of the Cap 180 Laws of Kenya. Counsel urged the court to dismiss the 1st defendant's counter-claim and allow the plaintiff's claim as prayed.

On the law Counsel submitted relied on Section 80 of the Land Registration Act, 2012 which **provides that:-**

'Subject to subsection (2) the court may order rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake'

That the Plaintiff has demonstrated why the title and the register ought to be rectified. Counsel cited the case of Monika Herta Elfriecle Behrmann VS Mubia Holdings Limited 120171eKLR in which the court invoked the Provisions of Section 80 to rectify a title. Counsel also relied on the case of Francis Nyauma Obare & 3 Others Vs Maina Marwanga Omwamire & Another (2017)eKLR where the court held that the court has to order rectification of title or register.

1ST DEFENDANT'S WRITTEN SUBMISSIONS

Counsel filed submissions on behalf of the 1st defendant and listed the following as undisputed facts in his opinion:

- a) The plaintiff's name is not in the 3rd defendant's member register;
- b) The 1st defendant is a member of the 3rd defendant and acquired the suit Property by way of sale and purchase from it;
- c) The 1st defendant is the registered Proprietor of the suit Property KOITOROR/TUIYO UK BLOCK I(KOITOROR) 174;
- d) The plaintiff has trespassed on the 1st defendant's Property and is in occupation of the same;
- e) There has never been any transaction between the plaintiff and the 1st defendant with respect to the suit Property;

Mr. Tororei reiterated the evidence on record and submitted that the plaintiff does not deserve the orders sought as he is not the registered owner of the suit land as no payment receipts were produced. That the plaintiff only stated that he has stayed on the suit land for over 40 years.

Counsel further urged the court to find that the plaintiff had not proved his case on a balance of probabilities and take judicial notice of the consent that set aside ex parte proceedings.

On the second issue as to whether the plaintiff has trespassed onto the 1st defendant's land, Counsel submitted that it is not in dispute that the plaintiff is in occupation of the suit land which title is registered in the 1st defendant's name. Counsel further cited section 26 of the Land Registration Act on indefeasibility of title and Article 40 of the Constitution. Counsel therefore prayed that the plaintiff's case be dismissed and the 1st defendant's counterclaim be allowed with costs.

3RD DEFENDANT'S WRITTEN SUBMISSIONS

Counsel for the 3rd defendant gave a brief background to the case and submitted that the issues for determination are as to whether or not the 3rd defendant's register had an error, whether the error should be rectified to reflect the true position and what the resultant effect of the rectification of the register would be.

Whether or not the members register had an error

On the 1st issue Counsel submitted that it is indeed confirmed by the director and the witnesses that there was an error on the members register. It was Counsel's submission that DW3 further gave evidence that when the Company realized that there was an anomaly on the Register it sought to have it rectified which they did by going to the Land Registrar's Office to rectify the error. That as the issue of **KOITOROR/TUIYOLUK BLOCK 1 (KOITOROR) 174** was being looked into the 1st Defendant who has been in occupation of **KOITOROR /TUIYOLUK BLOCK 1 (KOITOROR) 190** took advantage of the anomaly in the register which had erroneously enlisted him as the allottee of **KOITOROR/TUIYOLUK BLOCK 1 (KOITOROR) 174**, and had himself registered as the owner.

Counsel also submitted that the fact that the members register had anomalies was confirmed by DW2 the Land Registrar who stated that the same could be rectified by the company or by an order of the court. This is due to the fact that the Title deed had been issued over **KOITOROR/TUIYOLUK BLOCK 1 (KOITOROR) 174**, therefore the Company does not have any mandate to rectify after the issuance of the title.

Whether the error should be rectified to reflect the true position.

On the second issue Counsel submitted that when the 3rd Defendant realized that there was an anomaly on its member's Register it took steps to have it amended and /or rectified. That the Register had already been surrendered to the Land Registrar's Office for purposes of issuance of Title deeds to its members and that the 3rd defendant has a duty to discharge to its members to have the register rectified. That is why it wrote letters and got responses from the land Registrar. Counsel relied on the provisions of Section 80 of the Land Registration Act on rectification of register.

What the Resultant effect of the Rectification of the Register would be.

On the third issue on the effect of rectification, Counsel submitted that the error on the member's register of the 3rd Defendant is and has been pleaded to be an innocent mistake which ought to be rectified as was demonstrated through the evidence of DW 1 that he neither utilizes nor occupies **KOITOROR/ TUIYOLUK BLOCK 1 (KOITOROR) 174**. It therefore follows that he has no legitimate or equitable claim over it. His title deed over **KOITOROR/TUIYOLUK BLOCK 1 (KOITOROR) 174** is as a result of the mistake on the Register and fraud on his part as he moved to have himself registered as the proprietor after the suit had been instituted knowing too well that there was an anomaly in the Register.

Counsel cited Section 80 (2) of the Land Registration Act to buttress the 3rd Defendant's point which provides:-

“The Register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect

or default".

Miss Koech further submitted that the 1st Defendant is not in possession of KOITOROR/TUIYOLUK BLOCK 1(KOITOROR) 174 and as such subsection 2 thereof does not apply to his case. That in any event he had knowledge of the error sought to be rectified after the institution of the suit in May 2016 and in a bid to frustrate the rectification, he initiated the process of his registration as proprietor of KOITOROR/ TUIYOLUK BLOCK 1 (KOITOROR) 174 and was issued with a Title deed in September 2016.

That the 1st Defendant both during exam in chief and on cross-examination confirmed that he has been in occupation of KOITOROR /TUIYOLUK BLOCK 1 (KOITOROR) 190 for many years, that he has neither occupied, possessed nor utilized KOITOROR/TUIYOLUK BLOCK 1 (KOITOROR) 174 and as such has no legal stake on it. Counsel therefore submitted that the register be amended/rectified as such and that the plaintiff be registered as the proprietor.

ANAYSIS AND DETERMINATION.

This case had been heard ex parte and a judgment rendered in favour of the plaintiff as the defendants had failed to enter appearance and file defence. The parties later agreed to set aside the judgment by consent to allow the defendants to present their case.

This is a straight forward case where all the parties are in agreement that there was an error and there should be rectification of the register.

The issue for determination is whether there was an error in the register and whether rectification can be ordered and effected by the Registrar. From the evidence on record it is clear that both the plaintiff and the 1st defendant agree that they are members of Koitoror Farmers Ltd the 3rd defendant herein. It is also not disputed that the plaintiff has been in occupation of plot No. 174 and that the 1st defendant has been in occupation of plot No. 190 for over a period of 40 years. The evidence on record also confirms that members were allocated parcels where they were in occupation of.

Counsel for the 1st defendant listed some issues which he submitted that were undisputed but upon perusal I noticed that the issue of trespass on the part of the plaintiff is not factual as it does not fit well with the definition of trespass. A trespasser would be a person who unjustifiably intrudes upon land in possession of another. The 1st defendant admitted that he has never been in possession of the suit land and that it is the plaintiff who has been in possession of plot No 174 for over 40 years. The 1st defendant on cross examination admitted that there was an error on the register and that he obtained his title while the case for rectification of the title was pending in court. What was his aim of getting a title to land that he does not occupy while he was well aware of the anomaly with the register?

It is important to note that the 1st defendant also gave evidence in support for the rectification of the register as this would also be to his benefit. The evidence that he tendered were contrary to the defence and counterclaim that he filed and never pursued. He failed to give evidence to prove the counterclaim as it was an uphill task for him. The Land Registrar also confirmed that the rectification of the register can be done by either a resolution of the company or vide a court order. The land Registrar clarified to the court they received letters from DW3 on the issue of rectification of the register in respect of the 2nd defendant which they did accordingly. It was also her evidence that they were not aware that there was a dispute and the restriction from the court from further dealing with the suit land. She stated that if they were aware of the dispute then they could not have issued a title deed until the dispute is resolved.

As earlier stated the main issue for the court's determination is as to whether there was an error and whether rectification of the register can be done. Section 80 of the Land Registration Act, 2012 provides that:-

"Subject to subsection (2) the court may order rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake

This section is relevant to the present case and gives the court powers to order for rectification of the register. The court invoked the provisos of Section 80 to rectify the title in the case of MONIKA HERTA ELFRIECLE BEHRMANN VS MUBIA HOLDINGS LIMITED [2017] Counsel also relied on the case of FRANCIS NYAUMA OBARE & 3 OTHERS VS MAINA MARWANGA OMWAMIRE & ANOTHER (2017)eKLR where the court held that the court has powers to order rectification of title or register.

The evidence by all the parties is indicative of the fact that a rectification of the register is the only just order that the court can make in the circumstances of this case. The court has powers to order for rectification when it is satisfied that there was a genuine error or mistake on the register.

Having found that there was an error which needs to be rectified on the register, any registration that was effected while the error was subsisting is null and void. The registration of the 1st defendant as owner of plot No. 174 while the rectification process was on course vide this case is also null and void. The 1st defendant admitted that he obtained the title while the case was pending and informed the court that he has no problem with the rectification of the register. He therefore disowned his defence and counterclaim.

The import of Section 80(1) of the Land Registration Act is that the court has powers to order the cancellation or amendment of an entry or any registration when it is satisfied that the registration was obtained, made or omitted by fraud or mistake. This may include errors in the register, the title, typographical errors, and wrong parties or information entered on the register be it by fraud or mistake.

It should be noted that Section 80 of the Land Registration Act gives the court powers which are similar to the ones given to the Land Registrar under Section 79 of the same Act. The Land Registrar has immense powers under Section 79 but unfortunately they sparingly use it urging parties to go to court for orders of rectification. If the Land Registrars would apply the provisions of Section 79 then there would be less cases in court for rectification but it also has some limitations on when it can be invoked.

I have considered the evidence, the documents produced, the submissions of Counsel and the relevant judicial authorities and come to the conclusion that the plaintiff has proved his case against the defendants on a balance of probabilities and enter judgment in favour of the plaintiff. The 1st defendant has failed to prove his counterclaim as there was no evidence led to do so and is therefore dismissed with costs to the plaintiff. I make the following orders:

- a) That it is hereby declared that Parcel No. KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174 belongs to the plaintiff and that the title be cancelled and be registered in the name of the plaintiff.
- b) That the particulars contained in the 3rd defendant's register be rectified by striking out the name of the 2nd defendant and the plaintiff's name be inserted on the parcel No. KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174.
- c) An order of injunction is hereby issued barring the 2nd defendant or any other person claiming through him from interfering with the plaintiff's right over parcel No. KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174.
- d) The 2nd defendant to give vacant possession of the suit land KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174 within 30 days failure of which eviction orders to issue.
- e) The 1st and 2nd defendants to pay costs of the suit to the plaintiff.

Dated and delivered at Eldoret on this 23rd day of July, 2019.

M.A. ODENY

JUDGE

JUDGMENT READ IN OPEN COURT in the presence of Mrs. Khayo holding brief for Miss.Masai for Plaintiff and Miss.Koech for 3rd Defendant and in the absence of 2nd defendant.

Mr.Mwelem – Court Assistant