



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE NO. 115 OF 2017

PAUL KIPKURUI KOSKEI.....1ST PLAINTIFF

PHILIP KOCHIL.....2ND PLAINTIFF

**(Suing for and on behalf of themselves and as the legal administrators of the estate of
KIPKOSKEI ARAP MASE (DECEASED))**

VERSUS

STEPHEN SAGIRUK1ST DEFENDANT

PAUL RONO.....2ND DEFENDANT

LAND REGISTRAR NAKURU.....3RD DEFENDANT

JUDGMENT

1. Proceedings herein commenced through plaint filed on 17th March 2017 wherein the plaintiffs averred that they are the legal owners of the parcel of land known as LR No. Nakuru/Olenguruone/Chepakundi/1381 and that the 1st defendant is their immediate neighbour who owns the parcel of land known as LR No. Nakuru/Olenguruone/Chepakundi/1471 while the 2nd defendant is also a neighbour. They further stated that the road between the two parcels has a fixed route on the map and that it is under construction but the defendants have influenced a surveyor to write a report that the road should be rerouted through the plaintiffs' homestead.

2. They therefore seek judgment against the defendants jointly and severally for:

- a. An order of permanent injunction restraining the defendants by themselves, their servants, employees, contractors and or authorized agents from proceeding with the road construction through the plaintiffs homestead on land parcel LR No. Nakuru/Olenguruone/Chepakundi/1381.
- b. Costs of the suit and interests.
- c. Any other and or further relief as the Honourable Court may deem fit and just to grant.

3. The 1st and 3rd defendants entered appearance but did not file any defence. The 2nd defendant did not enter appearance and did not participate in the proceedings in any way. Although I have seen reference in the plaintiff's submissions to a statement of defence said to have been filed by the Attorney General for the 3rd defendant, I have not seen any such statement of defence in the file.

4. At the hearing, the 1st plaintiff testified as PW1. He stated that he obtained letters of Administrator dated 26th August 2015 in respect of the estate of his late father Kipkoske Arap Mase. His said father had a plot known as Nakuru/Olenguruone/Chepakundi/1381. The 2nd plaintiff is his brother and following the confirmation of the grant, the suit property plot is now owned by the 2nd plaintiff. He added that the 1st defendant is his neighbour and owner of plot No. 1471. A road separates the said plot from the suit property. He further stated that the 2nd defendant is also his neighbour and that they received a notice dated 31st October 2015 from the Assistant Chief but they are unhappy with the notice.

5. He also adopted his witness statement filed on 17th March 2017 as his evidence in chief. He had stated as follows in the statement:

I am a male adult of sound mind resident of Olenguruone and a farmer. LR No. Nakuru/Olenguruone/Chepakundi/1381 is registered in the name Kipkoske Arap Mase (deceased) the owner thereof. The said person is my deceased father and I am the administrator of his estate and one of the beneficiaries therein. The said land parcel was distributed to my brother Paul Kochil who is now the owner thereof. We have been on the land parcel residing therein peacefully since 1985. My brother has comprehensively developed the land built his homestead therein and resides therein with his family. The 1st defendant is an immediate neighbour to the land parcel and his land parcel is no. 1471 and the 2nd defendant is also a neighbour. The land parcels are separated by roads on the map but the roads have not been properly constructed. There is need to develop the road to facilitate easy access for all but unfortunately the defendants are taking advantage of the circumstances to interfere with the plaintiff's on the suit land. The area map clearly indicates where the road should be placed but the defendants are colluding to divert the road directly through the suit land and interfere with the plaintiff for no apparent reason. The defendants are interfering with the process and trying to influence the surveyors that they have brought on their own to re-route the road with the effect that the road will change from where it is supposed to be. The 1st and 2nd defendants have influenced the 3rd defendant, the area chief and the District Officer to force the placement of the road and change its course. They are in the process of surveying and placing beacons on the land without the involvement of the plaintiff. The defendants have brought surveyor who are in the process of placing beacons for the road and are planning to construct the road and demolish the 2nd defendant's homestead to make way for the road. They have brought surveyors whom they have influenced and when the plaintiff brought his own surveyor to confirm the road route the chief, the District Officer kept off. The surveyor could therefore not proceed to confirm the road route as he had not been provided with security.

We pray for intervention of the court, an order to stop the exercise and an order to the District Surveyor to oversee the exercise using the area map and the pre-planned road route.

That is all.

6. PW1 produced copy of Certificate of Confirmation of grant issued on 26th August 2015 in Nakuru High court Succession Cause No. 107 of 2014, copy of Land Certificate for Nakuru/Olenguruone/Chepakundi/1381 issued to Kipkoske Arap Mase on 8th July 1985 and copy of notice dated 31st October 2015 from Assistant Chief Chepakundi Sub Location as exhibits.

7. The 2nd plaintiff testified next as PW2. He too adopted his witness statement filed on 17th March 2017 as his evidence in chief. He had stated as follows in the statement:

I am a male adult of sound mind resident of Olenguruone and a farmer. I am owner of LR No. Nakuru/Olenguruone/Chepakundi/1381. The land belonged to my deceased father and I am beneficiary thereof. The plaintiff is the administrator of our father's estate. We have lived on the land since the year 1985. I have built my homestead therein and reside with my family. The 1st defendant and 2nd defendants are my neighbours. The area has a road on the map but which road has not been properly constructed. There is need to construct and confirm the road to facilitate accessibility but unfortunately the defendants are taking advantage of the situation to inconvenience me. Despite there being a clear indication on the map on the site of the road the defendants are colluding to influence, change and re-route the road. The defendants have colluded to influence surveyors to place beacons on the ground but instead of following the map or the boundary the surveyor are being instructed to place the road through my land parcel. They have started the process but are now insisting that I demolish my homestead to pave way for the road. The defendants have influenced the area chief and the District Officer to call meetings that I was not aware of and even went ahead to register my wife's name Grace Kochil at the meeting where are issuing directions to re-route the road through my homestead. I am prejudiced as the defendants are also using the area District Officer and chief to forcefully re-route and construct a road and I pray for intervention of the court. I pray for the court stop the exercise and order the district Land Surveyor to visit the land and ascertain the road route using the map area. I will be prejudiced if my homestead is demolished and the road placed through my land as they are already claiming that portions of my land left out by the road belong to them.

That is all.

8. The plaintiffs' case was then closed. Since there was no appearance for the defendants despite service, the defence cases were equally closed.

9. Only the plaintiffs filed written submissions. They argued that they had proven their case on a balance of probabilities. They urged the court to grant judgment as prayed.

10. I have carefully considered the pleadings, the evidence and the submissions herein. The plaintiff's case is uncontroverted. From the material placed before the court I am satisfied that the 1st plaintiff is the administrator of the estate of Kipkoske Arap Mase (deceased) pursuant to grant issued in Nakuru High court Succession Cause No. 107 of 2014 and that the grant was confirmed on 23rd July 2015. I note that in Certificate of Confirmation of grant issued on 26th August 2015 the parcel of land known as LR No. Nakuru/Olenguruone/Chepakundi/1381 was wholly distributed to the 2nd plaintiff. I also note that indeed the Assistant Chief Chepakundi Sub Location issued notice dated 31st October 2015 to the 2nd plaintiff and others. The notice stated that the 2nd plaintiff's two houses were in the middle of the road and would be demolished within 60 days. The notice further mentioned that a survey had been done.

11. I am therefore satisfied that the plaintiffs have proven their case on a balance of probabilities. I however do not see how the 3rd defendant is involved in the issues of road construction. The case against the 3rd defendant is therefore dismissed with no order as to costs.

12. I therefore enter judgment against the 1st and 2nd defendants jointly and severally and make the following orders:

a. I grant a permanent injunction restraining the defendants by themselves, their servants, employees, contractors and or authorized agents from proceeding with the road construction through the plaintiffs' homestead on land parcel LR No. Nakuru/Olenguruone/Chepakundi/1381.

b. The plaintiffs are awarded costs of the suit and interest thereon.

13. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 30th day of October 2019.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiffs

No appearance for the defendants

Court Assistants: Beatrice & Lotkomoi