



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 74 OF 2018

SAMUEL LOTIYWO MURIO.....PLAINTIFF

VERSUS

DANIEL TIKORO.....1ST DEFENDANT

ISAAC MARIACH LONGARKAYE.....2ND DEFENDANT

LOCHAUN LONGARKAYE.....3RD DEFENDANT

JUDGMENT

1. The plaintiff's claim is contained in the plaint dated **3/8/2018** which was filed on the same date. In that plaint, the plaintiff prays for the following orders against the defendants jointly and severally:-

(a) A declaration that the plaintiff is the sole and legal owner of Plot No. 151 in Kongelai Group Ranch, to the exclusion of the defendants who are trespassers in the suit land (plot).

(b) An order that the defendants do vacate the land comprised in Plot No. 151 Kongelai Group Ranch and failing which they be evicted with the assistance of the Assistant County Commissioner Kongelai Division and the OCS Kapenguria police station.

(c) Permanent injunction.

(d) Costs.

(e) Interests

(f) Any other relief this court may deem it to grant.

2. The plaintiff's case is that he is a member of **Kongelai Group Ranch** which owns the land comprised in title No. **West Pokot/Kongelai/1** measuring in excess of **22150 hectares** which parcel has already been subdivided among the group ranch members; that the plaintiff's plot is **No. 151** and measures over **200 acres**; that members of the group ranch including the plaintiff are yet to be issued with individual titles; that in or about 2010 or thereabout the 3 defendants for no apparent or justifiable reason invaded the plaintiff's plot and have forcefully remained in occupation thereon to date despite undertaking on 12/5/2013 to give vacant possession to the plaintiff on or by 30/10/2013; that the defendants have plot being No. 183 which was owned by their late father and they also have their personal plots though numbers yet to be given thereto; that the defendants are trespassers in Plot No. 151 and should be ordered to vacate therefrom failure to which they should be forcefully evicted; that the defendants early this year have wasted, damaged, burned bricks and sold to third parties part of the suit land to the detriment of the plaintiff and they should be enjoined permanently; that the dispute between the plaintiff and the defendants was heard before the Kongelai Group Ranch Committee, the Local Administration and the police and on each occasion it was held that the defendants occupied the plaintiff's land illegally. Despite those decisions the defendants have failed to give vacant possession of the suit land.

3. The defendant never filed any memorandum of appearance or defence despite being served with summons and plaint and other documents on **8/8/2018** as evidenced by the affidavit of service sworn by one **Godfrey Masinde Sitati** filed on **27/8/2018**.

4. The plaintiff testified on **16/9/2019** when this suit came up for formal proof. He reiterated the matters in the plaint and produced letter of allocation of land dated **17/9/1988** issued to Samuel Lotiywo of ID No. 7685691 (P. Exhibit 1). It contains the names of the seven committee

members and the stamp of the Kongelai Group Ranch. He also produced **P. Exhibit 2** and **P. Exhibit 3** being letters dated 20/11/2010 and 7/1/2013 to the officer-in-charge Kacheliba police station and the District Land Adjudication Office West Pokot respectively from the group ranch officials and the Assistant Chief Kongelai Sublocation respectively relating to the dispute over the suit land. **P. Exhibit 4** was also produced being the minutes of a meeting held on 7/5/2013 shared by the acting DO. Kongelai Division assisted by the Kongelai Group Ranch Chairman. It also related to the suit land. A purported agreement dated 12/5/2013 in which the 1st defendant is ostensibly undertaking to vacate the suit land by 30/10/2013 was also produced as **P. Exhibit 5**. A demand letter dated 11/11/2014 written by Chebii Cherop & Co. Advocates requiring the 2nd defendant and the 3rd defendant to vacate the suit land was produced as **P. Exhibit 7(a)** and a further demand addressed to the 1st defendant alone bearing the same date was produced as **P. Exhibit 7(b)**. A reminder dated 12/2/2016 was produced as **P. Exhibit 7(c)**. From the evidence of the plaintiff and the exhibits that he produced I am convinced that he has established his case against the defendants and that the defendants have illegally occupied Plot No. 151 Kongelai Group Ranch which the plaintiff is entitled to. I therefore enter judgment in favour of the plaintiff against the defendants jointly and severally and issue the following orders:

(a) A declaration that the plaintiff is the owner of Plot No. 151 in Kongelai Group Ranch.

(b) A declaration that the defendants are trespassers on Plot No. 151 in Kongelai Group Ranch.

(c) An order that the defendants shall vacate the land comprised in Plot No. 151 Kongelai Group Ranch and failing which they be evicted.

(c) An order of permanent injunction restraining the defendants from trespassing upon Plot No. 151 in Kongelai Group Ranch.

(d) The defendants shall bear the costs of this suit.

It is so ordered.

Dated, signed and delivered at Kitale on this 3rd day of October, 2019.

MWANGI NJOROGE

JUDGE

3/10/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the plaintiff

N/A for the defendant

COURT

Judgment read in open court at 2.30 p.m.

MWANGI NJOROGE

JUDGE

3/10/2019