

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 360 OF 2014

GODFREY KIPKETER SELEM.....PLAINTIFF

VERSUS

PHILIP MUGE.....DEFENDANT

JUDGMENT

Godfrey Kipketer Selem (hereinafter referred to as the plaintiff) has sued **Philip Muge (hereinafter referred to as the defendant)** claiming that the land parcel **NANDI/CHEMURSOI/545** belonged to the father of the defendant one KIPROTICH ARAP RUTO (deceased) who was also the grandfather of the plaintiff. The plaintiff avers that upon the passing away of KIPROTICH ARAP RUTO, the land devolved to the defendant and the mother of the plaintiff, one Esther Cherono Koech (deceased) in equal shares. The plaintiff avers further that he is a beneficiary of the late Esther Cherono Koech, under whom he claims in this suit and has been in physical possession and farming ½ portion of the land since the year 2000 and that in a dispute between the defendant and the later mother of the plaintiff, a panel of elders rendered verdict that the land shall be shared equally between the two. The plaintiff states that upto and around the month of August 2014, the suit land was clearly demarcated into two equal portions, one for the defendant and the other for the plaintiff.

That in or around the month of August, 2014, the defendant without any lawful excuse, colour of right, reason and/or consent from the plaintiff, cut down a left sisal fence of the plaintiff separating the two portions, of the suit land and has created access to the plaintiff's portion. The defendant has expressed intentions of harvesting sugarcane on the portion of land belonging to the plaintiff and has always had disputes over the land, first with his deceased mother and lately with him. The plaintiff contends that the threats by the defendant are not idle since he has done that previously and now the plaintiff seeks the intervention of the honourable court to stop the defendant from carrying through with his threats. The plaintiff further contends that the actions of the defendant are illegal and amounts to offences of malicious damages to property and trespass. The plaintiff therefore, seeks intervention in terms of a permanent injunction restraining the defendant from entering the plaintiff's portion of the land by himself, his servants, agents, assigns or any other person or persons claiming under him whatsoever and or to harvest sugarcane thereon or at all. The plaintiff further seeks costs of the suit to be paid by the defendants.

When the matter came for hearing, the plaintiff with his counsel attended but the defendant did not attend despite being served. The plaintiff states that the defendant in this case is his maternal uncle. The land parcel **NANDI/CHEMURSOI/PARCEL NO. 545** belonged to his grandfather who is now deceased. This land has no title deed as the same has been previously under adjudication which exercise is now complete only awaiting issuance of title deeds. That before his grandfather died, he left this land to his mother, Esther Cherono Koech and the defendant herein. His mother died but before that, she had a protracted dispute within the defendant before a panel of elders who rendered a verdict in the year 2002 in which the land was shared equally between his mother and his uncle, the defendant. That after his mother died, he took possession of her portion of the land belonging to his mother which he has been utilizing but the defendant has always had dispute with him over the land which has sometimes prompted the intervention of the area chief.

That regarding the current case, he planted sugarcane on his side of the land which by the time of filing this case had matured and was ready to be harvested. The defendant first started by cutting down live sisal fence dividing the land into two. He then filed, this matter and the Honourable court restrained the defendant from encroaching into his share of the land. In flagrant disregard of the said court orders, the defendant went ahead and harvested the sugarcane and delivered the same to Kibos Sugar Mills and allied industries. This honourable court later issued an order stopping disbursement of the proceeds of the sugarcane to the defendant or any other person working for him. That he is now seeking that the proceeds of the said sale be released to him and the defendant be permanently restrained from interfering with his portion of the land.

I have considered the pleadings and evidence on record and do find that the plaintiff has proved on a balance of probability that he planted the sugarcane on the disputed parcel of land and that he has all along been in possession and therefore he is entitled to one half of the parcel of land known as Nandi/Chemursoi/545 and I therefore do grant a permanent injunction restraining the defendant from entering the plaintiff's portion of the land by himself, his servants, agents, assigns or any other person or persons claiming under him whatsoever and or to harvest sugarcane thereon or at all. Each party to pay his own costs this being a family dispute. Orders accordingly.

Dated and delivered at Eldoret this 26th day of January, 2018.

A. OMBWAYO

JUDGE