



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 12 OF 2017

PKUKAT PSIREN.....PLAINTIFF

VERSUS

NGURIATUKEI PSIREN.....1ST DEFENDANT

CHEPOKENYEWA TOPOKOL.....2ND DEFENDANT

LOLEM TOPOKOL.....3RD DEFENDANT

JUDGMENT

1. In this suit the plaintiff seeks the following prayers:-

(a) A declaration that the defendants have no proprietary interest in West Pokot/Kanyarakwat “B”/65 and should vacate the same and/or forcefully be evicted.

(b) A permanent injunction restraining the 1st, 2nd and 3rd defendants either by themselves or through their agents or servants or any one claiming through them or acting on their behalf as the case may be from cultivating, cutting trees, erecting, constructing or putting up a building, or any structures or improvements of whatever nature or damaging or committing acts of waste or in any other manner whatsoever, interfering with the plaintiff’s user and occupation of the land comprised in the West Pokot/Kanyarakwat “B”/65.

(c) Costs of the suit.

(d) Interest

(e) Any other relief that the court may deems fit to grant.

2. The plaintiff’s case is that he is the registered owner of the whole of the land parcel known as **West Pokot/Kanyarakwat “B”/65** measuring approximately **18.5 Ha.** part of which the defendants forcefully and without any colour of right trespassed onto in the month of March, 2012 and started cultivating and erecting structures thereon subsequently to his report of the act of trespass but they were later acquitted under Section 210 of the Criminal Procedure Code.

3. Following that acquittal the defendants have continued to claim the suit land despite having no proprietary interest therein. The plaintiff pleads that the defendants have misused, damaged, wasted or destroyed or degraded the land and deprived the plaintiff the use and enjoyment thereof.

4. The plaintiff filed his written statement dated 28/1/2017 and that of the witness Emmanuel Chukatam Akutoo, of the same date. The plaintiff and his one witness testified on 8/11/2017 when this suit came up for formal proof. The defendants never filed any memorandum of appearance or defence despite being served with summons and plaint and other documents on 6/1/2017 as evidenced by the affidavit of service filed on 3/3/2017.

5. The plaintiff also produced documentary evidence in support of his claim. He stated that he obtained title in the year 2009 and produced a certified copy as evidence, which was marked as “*P. Exhibit 1*”. The plaintiff also produced Certificate of Official Search dated 12/1/2017 that showed that the land was still registered in his name as at that date. Photographs produced by the plaintiff as “*P. Exhibit 3(a) - (l)*” showed evidence of cut or burnt vegetation and some constructed structures.

6. Records from the Principal Magistrate's Court, Kapenguria showed that the *Criminal Case No. 1097 of 2012* brought on charges of forcible entry against the 1st and 3rd defendants herein was dismissed for want of sufficient evidence. I must state that the evidence required of a prosecution in a criminal case must be that which will establish beyond reasonable doubt that the accused has committed an offence. All that the plaintiff is required to do in this civil case regarding the suit land is to simply establish his claim on a balance of probabilities.

7. The plaintiff filed his submissions on 22/11/2017. I have considered those submissions. In my view the plaintiff has provided sufficient evidence which has proved on a balance of probabilities that he is the registered proprietor of the suit land and that he is entitled to it to the exclusion of the defendants who in any case did not defend the suit.

8. I therefore enter judgment in favour of the plaintiff against the defendants jointly and severally and I grant **Prayers No. (a), (b), (c) and (d)** of the **Plaint** dated **28/1/2017**.

Dated, signed and delivered at Kitale on this 6th day of February, 2018.

MWANGI NJOROGE

JUDGE

6/2/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Majanga for plaintiff

N/A for the defendant

COURT

Ruling read in open court in the presence of counsel for the plaintiff.

MWANGI NJOROGE

JUDGE

6/2/2018