



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 201 OF 2017

FORMERLY NAKURU ELC NO. 38 OF 2012

JOSEPH KOIKAI SANKAIRE.....PLAINTIFF

-VERSUS-

NAITAINA ENOLE SADERA.....DEFENDANT

JUDGEMENT

By a Plaintiff dated 14th February, 2012 the Plaintiff herein sued the Defendant seeking a permanent injunction restraining the Defendant, her servants, employees and agents from trespassing or in any manner dealing with a parcel of land known as Cis Mara/Oleleshwa/309.

It is the Plaintiff's case that at all material times to the suit herein he was the proprietor of the parcel of land known as Cis Mara/Oleleshwa/309 and the Defendant without any right, authority and consent of the Plaintiff, trespassed on the suit and thus interfered with the Plaintiff's enjoyment of his quiet possession and that despite demand letter being made the Defendant has refused to cease the aforesaid trespass.

It is worth noting that the Defendant despite service of summons has never filed any Memorandum of Appearance or a Defence to the suit and on this basis, on 17th July, 2017 the court having satisfied itself that the Defendant has not filed a Defence though properly served proceeded to hear the matter.

The Plaintiff testified as PW1 and in his evidence in chief he stated that he is the registered owner of Land Parcel No. Cis Mara/Oleleshwa/309 and in support of that he produced a certificate of title that was issued on 10th November, 2010. The Plaintiff further produced a certificate of search showing that the suit land is registered in his name.

The Plaintiff further informed the court that the Defendant is his neighbour and she started cultivating the suit land without his authority and consent. He stated that he lives on his other land which is at Olorurto area. The Plaintiff closed his case having not called any other witness.

At the close of his testimony the Plaintiff's counsel filed submissions and stated that the Plaintiff's evidence remains unchallenged as there was no defence filed.

Having heard the evidence of the Plaintiff which remains uncontroverted and unchallenged and the documentary evidence produced before the court, I find that the Plaintiff has proved his case on a balance of probabilities as the registered owner of LR Parcel No. Cis Mara/Oleleshwa/309 and in view of the above I enter Judgement for the Plaintiff against the Defendant and I order that an order of permanent injunction do issue restraining the Defendant by herself, servants, agents and/or employees from trespassing on the Plaintiff's land.

On the issue of damages for trespass, I find that the Plaintiff has not discharged the burden of proof on the same and I decline to issue any damages for trespass.

Costs of the suit to the plaintiff.

DATED, SIGNED and DELIVERED in open court at NAROK on this 24th day of October, 2018.

Mohamed N. Kullow

Judge

24/10/18

In the presence of:

Mr Nyamwange for the plaintiff

N/A for the Defendant

CA:Chuma