



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 573 OF 2017**

**SIMEON KIPRONO MUTAI.....PLAINTIFF**

**-VERSUS-**

**HILLARY ROTICH.....1<sup>ST</sup> DEFENDANT**

**SALIGET ARAP NGENO.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

By a Plaint dated 12<sup>th</sup> July, 2010 the Plaintiff filed the instant suit against the Defendants herein seeking a declaration that the Plaintiff is the registered and lawful owner of LR Trans Mara/Njipiship/116, an order of eviction of the Defendants from the suit land, a permanent injunction restraining the Defendants from trespassing, cultivating or in any manner dealing with the suit, general damages for trespass and costs of the suit.

It is the Plaintiff's case that on or about 27<sup>th</sup> July, 1982 Njipiship was declared an adjudication section and on the conclusion of the adjudication and demarcation process, the Plaintiff was allocated Plot No. 1161 which plot was subsequently registered as LR Trans Mara/Njipiship/1161 and he is still the registered proprietor of the said plot.

The Plaintiff stated that between 1998 to 2000 the Defendants without lawful cause and authority trespassed upon his land and erected temporary structures and started cultivation and the Defendant's actions aforesaid have denied him the right of use of the land and he has thus suffered loss and damage.

The Defendants filed a joint defence and denied the plaintiff's allegations and stated that they have no knowledge of the adjudication process and the subsequent allocation of the suit land to the Plaintiff. The 1<sup>st</sup> Defendant in his defence stated that he occupies and cultivates on his mother parcel of land which is Trans Mara Shartuka/1328 and the Plaintiff's allegations are pure malice and denies trespassing on the Plaintiff's land. The Defendants jointly deny the existence of any dispute between then and the Plaintiff.

The Plaintiff testified on his behalf as PW1 and in a sworn statement stated that he is the owner of LR Trans Mara/Njipiship/1161. He averred that Njipiship adjudication section is next to Shartuka adjudication section which its adjudication was done in 1973 and titles issued. He stated that the title for the property is held by the Agricultural Finance Co-operation as security after he took a loan of 200,000. He states the Defendants never leased or purchased the suit land from him at all. The Plaintiff produced as an exhibit the certificate of official search.

On cross-examination the Plaintiff stated that he knows the Defendants but they are not related and that the Defendants jointly invaded the suit land and about 40 acres of the land is occupied by the invaders and the 2<sup>nd</sup> Defendant in one of those who invaded and continue to live on his land.

The Plaintiff on cross-examination stated that the suit land belongs to one Moses Korinko and a caution was placed on the title by Shartuka Group Ranch.

The Plaintiff called Richard Kibet Rono who testified as PW2. He stated that he was a neighbour of the Plaintiff and knows that the Defendants entered the suit land forcefully together with another Group who were invited by the Defendants.

The Trans Mara Land Registrar Stephen Waithaka testified as PW3 and he stated that the suit land is registered in the name of the Plaintiff and confirmed that the Plaintiff was issued with a title to the land on 29<sup>th</sup> April, 1996 with land measuring 18 hectares. He produced a certified copy of the green card in respect of the suit showing that the land was registered in the name of the Plaintiff.

The Registrar further stated that there is a restriction registered against the title at the instance of Shartuka Group Ranch on the basis that the suit land has overlapped on their land. He stated that they have not confirmed on the ground whether there exists an overlap or not.

At the close of the Plaintiff's case on 24<sup>th</sup> February, 2015 the Defendants despite being given ample time never appeared to testify and on this basis on 19<sup>th</sup> February, 2018 the court having satisfied itself that the Defendants despite being served severally with a hearing notice never appeared, ordered the Defendants case closed.

The Plaintiff filed his submissions and invited the court to consider the Defendants evidence which is based on both oral and documentary evidence and the Defendants contend on their defence that they have no interest on the suit.

Having heard the testimony of the Plaintiff and the evidence he produced together with that of PW2 and 3, the issue for determination before the court is:-

- (i) To determine who is the lawful owner of the suit land
- (ii) Whether the Defendants have trespassed on the suit land
- (iii) What orders shall be just to grant

On who is the lawful owner of the suit land, the Plaintiff stated that he is the registered owner of the suit land but his title was with a financial institution. PW3 who is the Registrar confirmed the Plaintiff's averments and as a custodian of all records and taking into account there evidence was not challenged, I find that the Plaintiff has established a case with a balance of probabilities that he is the owner of the suit land.

The Defendants in their defence have categorically stated that they have no interest in the Plaintiff's land. I find this baffling to say the least and the Defendants Defence are just mere denials.

On whether the Defendants have trespassed on the suit land, it is in the affirmative despite the denial, PW1 and PW2 have proved that the Defendants are on the land illegally and without the consent and authority of the Plaintiff.

Having found that the Plaintiff has proved his case on a balance of probability and the Defendants have trespassed on his land, I will thus enter judgment for the Plaintiff against the Defendants jointly and severally as follows:-

1. A declaration is hereby issued that the Plaintiff is the registered and lawful owner of LR NO. TRANSMARA/NJIPISHIP/1161.
2. A Permanent injunction do issue against the Defendants jointly and severally restraining them from re-entering, trespassing into, cultivating, cutting trees and in any manner dealing with LR Trans Mara/Njipiship/1161.
3. That the Defendant within 90days of this judgement move out of the suit land and in default on the expiry of the 90 days eviction orders do issue which the Plaintiff must carry out in full compliance of the provisions of section 152 of the Land Act.
4. Costs of the suit to the plaintiffs.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 24<sup>th</sup> day of October, 2018.**

**Mohamed N. Kullow**

**Judge**

**24/10/18**

In the presence of:

N/A for the parties

CA:Chuma