



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 40 OF 2017

FORMERLY NAKURU HCC NO. 8 OF 2009

KILILWA OLE NKURUNA.....PLAINTIFF

VERSUS

PARSALOI OLE NKURUNA.....DEFENDANT

JUDGEMENT

By an Amended Plaint dated 10th November, 2010 the Plaintiff filed the instant suit and sought for a declaration that he owns and is entitled to 78 acres of land to be excised from the Defendant's Land Parcel No. CIS MARA/NAIBOR AJIKJIK/175 and an order directing the Defendant to transfer the aforesaid acres of land and in default the Deputy Registrar be empowered to exercise the order of transfer and the Registrar Narok to indicate on the Register that the Plaintiff owns about 78 acres of land forming part of **CIS MARA/NAIBOR AJIKJIK /175** and costs of the suit.

It is the Plaintiff's case that at all material times to the suit herein he was the registered proprietor of land parcel No. CIS MARA/NAIBOR AJIKJIK/173 measuring about 59.06 hectares and that the Defendant is the owner of land parcel No. CIS MARA/NAIBOR AJIKJIK/175 and that during the process of registration the Defendant illegally and fraudulently encroached on his land consequence of which the Defendant annexed about 75 acres of land which now forms part of the Defendant's land. The Plaintiff particularized according to him the Defendant's acts of illegality and fraud compressing the Defendant causing the reduction of his acreage, causing to be exercised about 75 acres of land, causing himself to be registered as the owner of land parcel No. CIS MARA/NAIBOR/AJIKJIK 175 knowing that the entire parcel did not belong to him and trespassing on the plaintiff.

The Defendant on his part denied the Plaintiff's contentions aforesaid and averred that the land he owns was allocated to him by the officials of Naibor Ajikjik Group Ranch which he and the plaintiff were members and denied that he obtained the suit land through fraudulent acts as stated by the Plaintiff.

The Plaintiff testified during the hearing of the suit as PW1 and stated that the Defendant is his brother and both of them were members of Naibor Ajikjik Group Ranch that was dissolved in 1984 after each of its members were allocated land and he was allocated land parcel No. CIS MARA/NAIBOR/AJIKJIK/173 and the land shown to him by the committee members and his land boarded that of his brother and the boundary between them was a river.

PW1 further stated that while he was away at work at Delamere Farms Surveyors came to the area to fix the actual boundaries of land in the process about 75 acres of his land was allegedly hired out without his permission and authority.

The plaintiff in his evidence further stated that he tried to have the matter amicably settled at family level but to no avail and to support his claim the plaintiff produced title to his land which was marked as P. exhibit 1.

The Plaintiff called one Kantel Ole Kapooti who testified as PW2. He stated that he is a brother to both the Plaintiff and the Defendant and that he was the chairman of Naibor Ajikjik Group Ranch from 1983 to 1999 when it was dissolved after the members agreed to sub-divide the land into individual parcels and that he showed the parties to the suit their individual parcels and both their parcels were divided by rivers and later surveyors were called to draw and fix the boundaries. However, the Plaintiff came complaining that the Defendant has encroached on his land and according to him the Defendant's land should not cross the river.

The Plaintiff also called one Sanel Ole Nkurunah who testified as PW 3 who is also a family member. It is his testimony that as a family they held a meeting to resolve the dispute between the parties here and by a meeting held on 10th August, 2013 and after deliberation they found that the Defendant had trespassed on the Plaintiff's land and he should thus surrender the portion and he produced the minutes of the said meeting.

The Plaintiff also called one Gilbert Yego the Narok District Surveyor to testify on his behalf. The surveyor stated that the land parcel

Naibor Ajikjik/173 and 175 do exist on the ground he stated that the boundary between both parcels of land on the map is a river.

During cross-examination PW1 stated that the title to his land is for about 100 acres and that the land that he owns and the original land he was shown do not confirm on the map.

The Defendant testified on his own behalf. He stated that he owns about 140 acres known as CIS MARA/NAIBOR AJIKJIK/175. He stated that he was shown his land after the sub-division of the group ranch and that he and the Plaintiff were members. He averred that though the boundary between him and the Plaintiff is a river he never crossed the said land.

The Defendant also called one John Olodoto who stated that he is the current chairman of the committee. He stated that he never received any complaints from the Plaintiff.

At the close of the hearing both agreed to file their respective submissions. However, though the Plaintiff filed their submissions the Defendant despite being given time has failed and neglected to do so.

Having heard evidence of both the Plaintiff and the Defendant together with that of their witnesses, the issue for determination before me is whether the Defendant has encroached on the Plaintiff's land and obtained 75 acres complained hereof.

From the evidence before me it is clear that both the Plaintiff and the Defendant were members of Naibor Ajikjik Group Ranch and each was allocated his land.

Having considered the testimony and the evidence of the parties I find that the Plaintiff had proved his case on a balance of probability and I consequently enter judgment for the plaintiff against the Defendant in the following terms:-

1. That a declaration do issue that the Plaintiff is entitled to 78 acres of the defendant's land being Cis Mara/Naibor Ajikjik/175.
2. That the Defendant do within 45 days of this judgement exercise and transfer 78 acres of land and in default the Deputy Registrar of this court is empowered to exercise and transfer the said 78 acres to the plaintiff.
3. An order do hereby issue directing the land registrar to formalize the said transfer.
4. The costs of the suit to the Plaintiff.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **17TH DAY OF OCTOBER, 2018**.

Mohamed Kullow

Judge

In the presence of:

CA:Chuma

Mr Mugambi for the Plaintiff

Mr Yenko for the Defendant

Mohamed Kullow

Judge

17/10/18