



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC SUIT NO. 847 OF 2015

FREDRICK RAPANDO.....PLAINTIFF

VERSUS

CONSTANTINE OUMA & 6 OTHERS.....DEFENDANTS

JUDGMENT

1. Fredrick Rapando, the Plaintiff, commenced this suit against Constantine Ouma, Aggre Ngare Mangeti, Fredrick K. Wambogo, Lameck E. Mangeti, Patrick Mangeti Chitechi, Ronald Oduori and Mumias Sugar Company Limited, the 1st to 7th Defendants respectively, through the plaint dated 25th August 2000, and amended on the 10th February 2015, seeking the following;

- a) **General damages for trespass onto North Wanga/Koyonzo/1308.**
- b) **Injunction order restraining the 1st to 6th Defendants, by themselves or agents from trespassing onto North Wanga/Koyonzo/1308 or collecting from the 7th Defendant the proceeds of the sugarcane illegally developed (sic) thereon.**
- c) **An order for the release of the sum of Kshs. 85,796.25 deposited in court.**
- d) **Costs of the suit.**
- e) **Interest on (a) and (c) above.**

2. The Plaintiff avers that the 1st to 6th Defendants forcefully, and without legal right, entered onto the Plaintiff land parcel North Wanga/Koyonzo/1308 on or about 1998 and planted sugarcane after entering into contracts with the 7th Defendant. That the acts of the Defendants deprived the Plaintiff of the right to use and develop his land and has suffered damages.

3. The Defendants failed to enter and file appearances and defence and the suit proceeded through formal proof on the 13th July 2001 and the court delivered its judgment on the same date. That the 1st Defendant then filed the chamber summons dated 5th October 2003 seeking for, among others, setting aside of the judgment. That the application appear to have been heard and allowed as summons were reissued and served afresh. That the Plaintiff then filed and served the Amended plaint dated 10th February 2015, but the Defendants failed again to file their defence. That the hearing proceeded to formal proof a second time on the 19th September 2018.

4. That the Plaintiff testified as PW1. He produced a copy of the title deed and copy of green card for land parcel North Wanga/Koyonzo/1308 which show that he become the registered proprietor on the 2nd December 1998. He also produced a letter dated 15th December 2003 from the 7th Defendant to the Deputy Registrar of this court allegedly forwarding cheque No. 140840 for Kshs. 85,796.25 on the various accounts in obedience to the court order of 19th February 2001. The Plaintiff prays for the money deposited by the 7th Defendant to be released to him, damages for trespass and costs. The Court has noted that the letter dated 15th December 2003 do not have the Court's receipt stamp and there is no receipt issued in acknowledgment of the deposit.

5. The following are the issues for Court's determination;

- a) Whether the 1st to 6th Defendants had any legal rights to enter and grow sugarcane on land parcel North Wanga/Koyonzo/1308.
- b) Whether the Plaintiff is entitled to the money allegedly deposited with the court by 7th Defendant.
- c) Whether the Plaintiff is entitled to general damages and if so, how much.

d) Whether the Plaintiff is entitled to costs.

6. The Court has carefully considered the pleadings, oral and documentary evidence presented by the Plaintiff and come to the following findings;

a) That the documentary evidence in the form of copy of title deed and certified copy of green card (register) for North Wanga/Koyonzo/1308 produced as exhibits 1 and 2, whose contents is uncontroverted, confirms that the Plaintiff became the registered proprietor of the said land on the 2nd December 1998. That the registration as proprietor of the said land gave the Plaintiff rights and privileges that includes quiet and peaceful occupation of the land. That the action of the 1st to the 6th Defendants to plant sugarcane under contract with the 7th Defendant on the suit land without the consent or authority of the Plaintiff amounted to trespass to land.

b) That the Plaintiff is therefore entitled to the proceeds of the sugarcane delivered by the 1st to 6th Defendants, and which the 7th Defendant has reportedly forwarded to the court.

c) That as there is no disclosure as to whether the 1st to the 6th Defendants had received any payment from the 7th Defendant over the sugarcane grown on the suit land, and as the Plaintiff did not present to the court any evidence to show that he would have earned more from the land than the amount deposited by the 7th Defendant, the court finds that the Plaintiff has failed to establish his claim for general damages. That the Plaintiff did not seek for permanent injunction when he testified before the court and that prayer is taken as abandoned.

7. That flowing from the foregoing the court finds for the Plaintiff, and against the Defendants jointly and severally, and orders as follows;

a) That the amount of Kshs. 85,796.25 in respect of the 1st to 6th Defendants accounts with the 7th Defendant, and reportedly deposited with the Court by the 7th Defendant vide cheque No. 140840 forwarded through their letter reference ADM/CS/15 of 15th December 2003, be released to the Plaintiff forthwith.

b) That the Defendants do pay the Plaintiff costs and interests on (a) above.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 28TH DAY OF NOVEMBER 2018

In the presence of:

Plaintiff Present

Defendants Absent

Counsel Mr. Adiso for Masaka for Plaintiff.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE