



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 61 OF 2018**

**KABOYI MERKOR.....PLAINTIFF**

**VERSUS**

**LOMUKE PUSIKWANG.....DEFENDANT**

**RULING**

**Introduction**

1. The plaintiff commenced this suit vide a plaint dated **28<sup>th</sup> June, 2018** and filed in court on **29/6/18** seeking a declaration that the defendant's title for land **Parcel Number West Pokot/ Chepareria/558** was fraudulently acquired and an order directing the Land Registrar West Pokot County to cancel the defendant's title and reissue two separate title deeds in respect of equal portions of the land to the plaintiff and to the defendant respectively.
2. The plaintiff filed an amended plaint later on to plead adverse possession of the area that he occupies which he identified as part of **Plot Number West Pokot/Chepareria/558**.
3. The defendant filed his defence on **13/9/2018**. He averred that he, his father and the plaintiff had been issued with a land parcel each, and that the plaintiff's land is comprised in **Parcel No 490**, while his is **parcel number 483** which he still occupies with his family and that the parcels are three kilometers apart.
4. In the defence, which pleads quite as substantial amount of fact as the plaint does, it is the defendant's case that the plaintiff moved and settled in different places while still cultivating **Parcel Number 490** and finally settled with the 1<sup>st</sup> defendant's permission on **Parcel No. 483** as a family member but still went on cultivating **Parcel Number 490** and even now some of the plaintiff's sons are still in occupation of **Plot Number 490**. It is alleged that the defendant got registered as proprietor of **plot Number 558** in **1998** and the plaintiff occupied **Plot Number 558** but later moved out of it in **2004** and has never returned and therefore the claim for adverse possession is unmerited.
5. The application dated **25<sup>th</sup> September 2018** seeks that the defendants be restrained from evicting the plaintiff and his family members from **Parcel Number 558**. The grounds are that the plaintiff and his family have been in occupation of half of that parcel since the **1950s** with the defendant's knowledge, have built houses thereon, have buried their dead thereon without demur from any one, and have been identifying that parcel as **Parcel Number 490** since the land was issued and boundary between the plaintiff and the defendant demarcated. The further grounds are that the defendant has nevertheless proceeded to have the land registered in his name.
6. The defendant filed his response by way of a sworn affidavit dated **1<sup>st</sup> October 2018** and filed on the **2<sup>nd</sup> October 2018**.
7. In that reply the defendant states that the plaintiff is his paternal uncle who has his own land comprised in **Parcel Number 490** which is now occupied by some of the defendant's sons. It is alleged that the sons of the plaintiff moved out of the defendant's land known as **Plot 558** to **Plot Number 490** when they got married. It also reiterates some of the facts in the defence. It is alleged that the only son of the plaintiff who is still in occupation of ten or so acres of **Parcel Number 558** has already been issued with a demand to vacate the land. Finally it alleges that the status quo order made earlier on in this matter is likely to be abused by the plaintiff and it is alleged that the plaintiff, who is said to have been living elsewhere, moved into the suit land on **23<sup>rd</sup> September 2018**. There is a supplementary replying affidavit of **1<sup>st</sup> October 2018** of one Poghiso Kegireng who describes himself as a village elder who states that he is a close neighbour to the 1<sup>st</sup> defendant. He avers that only the plaintiff's sons used to live on **Plot Number 558** and that they later moved out of that parcel leaving only one son William Korwa who occupies only **10 acres** of the land and that the plaintiff lives in Kapenguria with his other son called Martin.
8. There is supplementary affidavit of the plaintiff filed on **8/10/2018**. In it he denies that his family ever moved out of the land comprised in **Parcel Number 558**.
9. I have considered the application and the pleadings on the record. In a matter that raises so much detail as the instant suit it is not possible

to determine the parties' rights unless the main suit is heard on the merits. I have noted the complaint of the 1<sup>st</sup> defendant that the plaintiff has used the status quo order to move into the premises. Evidence in the supplementary affidavit points to the fact that it is the plaintiff's sons who were in possession of the land and that they moved out of the land leaving only one of them thereon. It is the 1<sup>st</sup> defendant's version that even the remaining son has been asked to vacate the land.

10. In a case of this nature it is necessary that the status quo be noted and be maintained till the hearing and determination of the suit.

11. I therefore order that the status quo shall be maintained as it is. There shall be no development of the land and no further use or cultivation beyond the areas currently used or cultivated by the plaintiff's remaining son till the determination of this suit. No further persons shall be brought onto the land to occupy it or any further portion thereof. This suit shall be listed for hearing on the **5<sup>th</sup> March, 2019 at 9.00 am** on which date both parties shall be ready to proceed to the conclusion of their respective cases.

It is so ordered.

**Dated, signed and delivered at Kitale on this 15<sup>th</sup> day of November, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**15/11/2018**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Kaosa for applicant/plaintiff

Mr. Kiarie for 1<sup>st</sup> respondent

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**15/11/2018**