



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 70 OF 2015

NAPARENG KORII KAPKURESWA.....PLAINTIFF

VERSUS

SOLOMON CHELIPEI.....DEFENDANT

JUDGMENT

1. By a plaint dated 21/5/2015 and filed in court on the same date, and later amended on 3rd June 2013, the plaintiff sought the following orders against the defendant:-

i. A declaration that the defendant has no proprietary interest in LR Number West Pokot /Keringet “A” /224

ii. A permanent injunction restraining the defendant his servants or agents or anyone claiming under him from erecting, constructing or putting up a building cultivating or any structures or improvements of whatever nature or damaging or committing acts of waste or in any other manner whatsoever interfering with the plaintiff’s parcel of land known as LR Number West Pokot /Keringet “A” /224

iii. Costs of this suit.

iv. Any other relief this Honourable court may deem fit to grant.

2. Other than file a memorandum of appearance on 29/6/2015 and a defence on 17/7/2015 the defendant did not participate in this suit in any other manner. A reply to the defence was filed by the plaintiff on the 24th July 2015. The court is satisfied that the defendant was adequately served with the hearing notice for the hearing scheduled for 30/10/2018 but he never appeared at the hearing.

The Plaintiff’s Case

3. On 30/10/2018 the plaintiff testified in his case. He stated that his father, Korii Kapkireswo died in 1987; that the deceased was the owner of LR Number West Pokot /Keringet “A” /224, that after his death he lodged succession proceedings and was made administrator to his estate, that the grant was confirmed, that he became registered over the suit land; that the defendant trespassed on the land alleging that he had been sold the land by the plaintiff’s brother who is now deceased; that the plaintiff asked the defendant to avail himself so as to have the matter discussed and the defendant refused; that the plaintiff reported the trespass to the police; that demands were written to the defendant by the plaintiff’s advocates requiring the defendant to vacate the land but he remained in trespass thereon. The plaintiff stated that he wanted the defendant removed from the land.

4. I have examined the Grant of Letters of Administration dated 25/10/2011 in Kitale HC Succession Cause No 143/11, the Confirmation of Grant in that Cause dated 27/3/2014, and the title deed dated 10th October 2014.

5. I am satisfied that the plaintiff was granted the right to be registered to hold the land in trust for all beneficiaries of whom the defendant has not proved himself to be one. I therefore find that the plaintiff has established his claim against the defendant on a balance of probabilities and I therefore enter judgment for the plaintiff against the defendant as prayed in the plaint. I therefore issue the following orders:

(a) A declaration that the defendant has no proprietary interest in LR Number West Pokot /Keringet “A”/224;

(b) A permanent injunction restraining the defendant his servants or agents or anyone claiming under him from erecting, constructing or putting up a building cultivating or any structures or improvements of whatever nature or damaging or committing acts of waste or in any other manner whatsoever interfering with the plaintiff’s parcel of land known as LR Number West Pokot/Keringet “A”/224.

(c) An order that the defendant and all those claiming under him shall remove themselves and their property from the suit land that is LR Number West Pokot/Keringet“A”/224 within 90 days from the date of service of this decree upon them;

(d) The Costs of this suit shall be borne by the defendant.

It is so ordered.

Dated, signed and delivered at Kitale on this 14th day of November, 2018.

MWANGI NJOROGE

JUDGE

14/11/2018

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the plaintiff

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

14/11/2018