

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 179 OF 2016

DAVID KIPKEMOI YATOR.....PLAINTIFF

VERSUS

ELGEYO MARAKWET COUNTY.....DEFENDANT

JUDGMENT

David Kipkemoi Yator, (hereinafter referred to as the plaintiff) has come to court against the **Elgeyo Marakwet County (hereinafter referred to as the defendant)** claiming that at all material times to this suit, the plaintiff was and is still a sole registered proprietor of land parcel number Sambirir/Sambirir/354 measuring about 0.14 Ha (i.e. 0.366) acres situated at Cheptobot Village, Kimnai location, Kimnai Division within Elgeyo Marakwet County. The plaintiff avers that on or about 20.7.2014, the chief of Kaptich location wrote to District Surveyor, Marakwet West Sub-County stating that there was a boundary dispute between the plaintiff and neighbours and required him to visit the site to determine the issues. The plaintiff further avers that on 22.7.2014, the District Surveyor Kapsowar wrote to the chief, Kaptich Location indicating that he would visit the site on 24.7.2015 and that the chief was to arrange the security for the purposes. However, they did not visit the place as indicated and that on 10.6.2015, the District Surveyor Kasowar wrote to the chief Kaptich, location indicating that he would visit the site on 17.6.2015 to show the road of access through land parcel number Sambirir/Sambirir/354 and 344 but they did not visit the site and that on 11.11.2015, the Ward Administrator, Kapyego Ward one Philemon K. Biwott wrote a letter to the plaintiff indicating that the plaintiff had encroached on road reserve in Cheptobot Trading Centre and ordered the plaintiff to demolish the fence immediately or law enforcement be effected. The plaintiff further avers that on without any survey being done as intended to establish, the correct position of the road access as indicated, the defendant officials went to the site and started expanding the road of access by using caterpillars and other machineries. The plaintiff states further that despite all his protest as against the action by the defendant agents, the defendant through its agent destroyed the fence made using barbered wire and wooden post and the plaintiff has since suffered damages of Kshs.50,000/= through the defendants illegal and/or unprocedural way of enforcing their laws. The plaintiff avers that he engaged valuers to establish the damages suffered and the valuers indicate the loss was Kshs.50,000/=. The plaintiff further paid the costs of the valuation report being Kshs.7,000/= all totaling to Kshs.57,000/=. That the plaintiff further avers that despite numerous demands made to the defendant to reinstate the position as it were before their illegal action, the defendant has since remained dormant hence this suit.

The plaintiff therefore prays that the court do order that the survey be done by a County Surveyor from a different County to ascertain the correct position of the road of access and if found that the created road of access by the defendant is in the plaintiff's land, then the fence be reinstated to previous position or to the correct position by the defendant at their own cost and permanent order of injunction against the defendant their agent and/or their servants and/or their workers be issued to restrain them from intermeddling with the plaintiff peaceful use and/or occupation of land parcel number Sambirir/Sambirir/354. That the plaintiff further avers that the defendant do compensate the plaintiff for damages suffered and the value indicated to be the loss of Kshs.50,000/= plus the costs of the valuation report being Kshs.7,000/= all totaling to Kshs.57,000. Cost of the suit and Interest.

The defendant failed to enter appearance and file defence. Judgment was entered for Kshs.57,000/= being the value of the damage and the cost of the valuer's report.

The plaintiff testified that he is the holder of land parcel number L.R. No. Sambirir/Sambirir/354 measuring 0.148 Ha i.e. 0.366 acres. The land is situated at Cheptobot village Kaptich Location, Kapyego Division, Elgeyo Marakwet County. That he fenced his land 6 months ago, with barbered wire and wooden post. His land is triangular in shape and it is at the junction and it is sandwiched between 2 road access. On 2.12.2015, the County Government of Elgeyo Marakwet County brought a caterpillar and started working on the road. They destroyed his fence without any sufficient reasons.

That the loses which the County Government of Elgeyo Marakwet County have done totals to Kshs. 50,000/=. They have also trespassed unto his land and converted part of it be part of the expansion of the road access without any justifiable reasons. That all his protest to stop them from destroying and trespassing unto his land has gone in vain. That after the destruction, he engaged a valuer who has since established that the damages caused is Kshs. 50,000/=. He paid Kshs. 7,000 for the valuation report. He therefore states that the court does grant the prayer sought.

I have considered the evidence on record and do find that the plaintiff has proved on a balance of probabilities that he is the registered proprietor of Sambirir/Sambirir/354 and that the act of expanding the road without a proper survey was illegal. Ultimately, this court grants judgment for the plaintiff against the defendant for damages suffered and the value indicated to be the loss of Kshs. 50,000/= plus the costs of the valuation report being Kshs. 7,000/= all totaling to Kshs. 57,000. The court does further order that a survey be done by a Uasin Gishu County Surveyor to ascertain the correct position of the road of access and if found that the created road of access is in the plaintiff land known as Sambirir/Sambirir/354, then the same fence be reinstated to previous position or to the correct position by the defendant at their own costs. Permanent order of injunction to be issued as against the defendant and/or agents and/or employees and/or anyone under their instructions from further interfering with the plaintiff occupation and/or use and/or doing anything on the suit land being Sambirir/Sambirir/354. Cost of the suit plus interest to the plaintiff. Orders accordingly.

DATED AND DELIVERED AT ELDORET ON 2ND DAY OF MARCH, 2017.

ANTONY OMBWAYO

JUDGE