



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 88 OF 2016

HANNINGTON TUWEI KOSKEI..... PLAINTIFF

VERSUS

EMMANUEL NGEIYWA..... DEFENDANT

J U D G E M E N T

1. The plaint in this matter was filed on 25/5/2016. It sought the following orders:-

(a) “A declaration that the defendant herein has no legal right to close the access road accessing the plaintiff’s parcel of land No. West Pokot/Siyoi A/217 in between parcel Nos. West Pokot/Siyoi A/218 and that he be compelled to reopen the same forthwith.

(b) Permanent injunction restraining the defendant from ever closing the access road.

(c) Costs of the suit

(d) Any other relief this Honourable Court may deem fit and just to grant”.

2. The plaintiff pleaded that there has been a public road which was created in or about 1960s; that the said road was in use during the life time of the parties’ fathers who lived peacefully with each other; that after the demise of the defendant’s father and the plaintiff’s father, the defendant, with no justifiable cause closed the public road; that the closure made it impossible for the plaintiff and other members of the public to access their homes and take their cows to the river for water; that the matter was referred to the local administration but in vain; that the said road appears on the map and the defendant has no legal justification or right to interfere with it; and that the defendant should be compelled by an order of this court to reopen the road of access that he had closed, and that a permanent injunction should issue against the defendant.

3. According to the affidavit of service sworn by one Godfrey Masinde Sitati a court process server No. 0321, the plaintiff’s documents in this suit, including summons to enter appearance were served upon the defendant on 25/5/2016. However the defendant never filed any appearance or defence to the suit.

4. This matter was therefore set down for formal proof on 3/4/2017, when, owing to pressure of work on the part of the court, the suit could not be heard and it was thus adjourned to the next day, 4/4/2017, when the plaintiff testified and produced documentary evidence.

5. The plaintiff testified that the plot belonging to his family, which is registered in the name of his late father, is **LR. No. West Pokot/Siyoi A/217** while the defendant’s family lives on **Plot No. West Pokot/Soyoi A/218**. The plaintiff produced a copy of the title deed for Plot No. West Pokot/Siyoi A/217

in the name of Kimining Arap Koskei. He however explained that the Estate of the deceased was the subject of a succession cause and this had necessitated a surrender of the original title deed to the Lands office. The plaintiff produced P.Exhibit 2", a copy of the Certificate of Confirmation of Grant in which it is stated that he has been made the administrator of the Estate of Kimining Arap Koskei, his deceased father.

6. The plaintiff testified that the road is between Plots Numbers West Pokot/Siyoi A/217 and West Pokot/Siyoi A/218; that it was created in the 1960s; that the plaintiff's and the defendant's fathers were supposed to donate 5 metres each to create the road; that however only the plaintiff's father donated 5 metres as the defendant's father refused to so donate 5 metres from his land; that only the 5 metres donated by the plaintiff's father have been utilized by the plaintiff's family and neighbours; that the dispute over the road had been taken before the Land Disputes Tribunal, Kapenguria; that the Tribunal had decided that each party, the plaintiff and the defendant, should give four metres from their respective plots, to pave the way for the road; that the Tribunal found that the plaintiff had already given four metres and only the defendant should now give 4 metres; that in the year 2014, the defendant closed the road; that the plaintiff and others have been walking or driving their animals over the edge of Plot No. West Pokot/Siyoi A/217; that the area Chief asked the defendant to reopen the road but the defendant refused, hence the demand letter issued by the plaintiff's advocate and this suit.

7. The plaintiff other documentary evidence is comprised of minutes and decision of the Siyoi Section Land Adjudication Committee and decision dated 22/5/1972 which shows that the Committee found for the plaintiff's father in a boundary dispute pitting him against the defendant's father. It is the boundaries as recognized by this ruling which the plaintiff avers have been observed till the defendant closed the subject road. The record of the Kapenguria Land Disputes Tribunal dated 22/1/2008 corroborates the plaintiff's case. By that ruling the defendant was required to cede 4 metres for the purpose of the road. However, instead of ceding space for the road, the defendant reacted by closing the existing road which had been created out of land given by the plaintiff's father.

8. From the photographic evidence produced in court, the court notes that the existing road had been established and that it bears the hallmarks of having been utilized for a long period of time. It is lined on either side by a live fence, and the fencing posts jutting out from the foliage of the live fences look ancient and are partly covered by moss. In contrast, the fencing posts now erected across the said road as well as the off cuts nailed crosswise on the said posts look relatively fresh, recent.

9. In conclusion, the plaintiff has proved his case on a balance of probabilities. The following orders shall issue:-

(a) An order of declaration, declaring that the defendant herein has no legal right to close the access road between Land Parcels West Pokot/Siyoi A/217 and West Pokot/Siyoi A/218.

(b) That the defendant shall upon service of these orders promptly and immediately remove all the posts and off cuts he had placed across the road, or any other impediment, and shall therefore reopen the said road and keep it open.

(c) An order of permanent injunction shall issue, restraining the defendant from ever closing the said road referred to in Order (a) above.

(d) The defendant shall bear the costs of this suit.

It is so ordered.

Signed, dated and delivered at Kitale on this 29th day of May, 2017.

MWANGI NJOROGE

JUDGE

29/05/2017

Before - Mwangi Njoroge Judge

Mr. Koech for the plaintiff

N/A for the defendant

Court Assistant - Isabellah

Ruling read in open Court.

MWANGI NJOROGE

JUDGE

29/05/2017