



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE N0.114 OF 2016

SEMUK LOTAKO.....PLAINTIFF

VERSUS

JULIUS KOKILE.....DEFENDANT

J U D G M E N T

1. The plaintiff in this suit filed his plaint on 1/8/2016. In the plaint he has sought the following orders:-
 - a) **An eviction of the defendant and all those claiming under him from the parcel of land known as LR West Pokot/Kapsait/223 measuring 12.38 Ha.**
 - b) **A permanent injunction restraining the defendant and those claiming under him from trespassing upon and or committing any acts upon the plaintiff's said parcel of land known as LR N0.West Pokot/Kapsait/223 measuring 12.38Ha**
 - c) **Costs of the suit**
 - d) **Any other relief the court may deem fit and just.**
2. An Affidavit of service sworn on 9/8/2016 by one Raphael Nyongesa Simiyu, a process server, shows that the defendant was served with summons to enter appearance, plaint, verifying affidavit, and other documents filed together with the plaint on 3/8/2016. The defendant did not however file any memorandum of appearance or defence and the suit proceeded to hearing exparte on 31/7/2017.
3. At the hearing the plaintiff adopted his statement which was filed together with the plaint and then produced certain documents in support of his case;The plaintiff's case is that he is the absolute sole proprietor of the land parcel known as West Pokot/Kapsait/223 measuring 12.38Ha; The defendant has without any justifiable reason or colour of right encroached onto the plaintiff land said parcel and now cultivating the land, grazing on it and he has filled indigenous trees for fuel, all without the consent of the plaintiff.
4. As indicated above, this suit is not opposed. The plaintiff in his testimony produced the original Title deed for the suit land. It is issued in his name. It was marked as **PExh1**. He also produced a certificate of official search dated 4/7/2016 as **PExh2**. It shows that the land was still his as at the search date.
5. Proceedings in respect of a dispute the plaintiff earlier on had with the defendant were produced as **PExh3**. They show that an appeal to the Minister which had been filed by the plaintiff against the

defendant had been determined in favour of the plaintiff in part. The ruling in that appeal read as follows:

- “1. Appeal on P/No. 223 is dismissed therefore P/NO. 223 is awarded to Samuk Lotako.**
- 2. Appeal on P/No. 220 filed by Samuk Lotako is allowed partly. Land committee decision is adopted meaning Julius is given 4 acres on the disputed land. There remaining is combined to PNO 223”.**

6. The Ruling is signed by P.K. Kiplagat, District Commissioner Pokot South District. It is dated 26/7/2012.

7. The title deed in respect of Plot No. 223 was issued on 10/9/2014. This is the parcel which had been found in the Ruling above to belong wholly to the plaintiff. There were four more acres added to it by the Ruling dated 26/7/2012. It is not indicated whether or not these comprise the portion of land that the defendant is illegally occupying. Nevertheless, the suit is not opposed. Demands addressed to the defendant by the plaintiff advocate, were produced as **P.Exh 5 (a)** and **P.Exh 5(b)**. They demanded an end to the defendant’s interference with the plaintiff’s land, **West Pokot/Kapsait/223**. A response was received from Ms Katina & Co. Advocates, who responded on behalf of the defendant. It is dated 20/7/2015 and was produced as **P.Exh6**. It states that it is not indispute that the plaintiff is registered as owner of plot No. **West Pokot/Kapsait/223**. It alleges that the plaintiff has been attempting to carve out a portion of the defendant’s land in order to dispose it off and that the plaintiff is not entitled to any part of **West Pokot/Kapsait/220**. It denies that the defendant has ever occupied the plaintiff’s land but that he has been occupying their own land parcel No **West Pokot/Kapsait/220** registered in defendant’s deceased father’s name. However, the plaintiff does not claim parcel No. **West Pokot/Kapsait/220**. **He claims LR. No. West Pokot/Kapsait/223.**

8. The plaintiff also produced as **P.Exh 7** a letter from the Director of Land Adjudication addressed to the Chief Land Registrar. It shows that the Ruling of the District Commissioner dated 26/7/2012 was implemented in full and a new edition of the Registry Index Map was issued. It is clear that the title held by the plaintiff was issued by the Chief Lands Registrar after this confirmation was given.

9. All in all, I find that the plaintiff has proved his case on a balance of probabilities. His claim therefore, succeeds entirely. I therefore enter judgment for the plaintiff as against the defendant and grant the orders sought in prayers No. **(a)** and **(b)** of the plaint dated **15/8/2016**. The defendant shall bear the costs of this suit.

It is so ordered.

Dated, signed and delivered at Kitale on this **24th** day of **August, 2017**.

MWANGI NJOROGE

JUDGE

24/8/2017

Before - Mwangi Njoroge Judge

Court Assistant – Isabellah/Picoty

Mr. Bororio for Plaintiff

N/A for defendant

Judgement read in open court.

MWANGI NJOROGI

JUDGE

24/8/2017