

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

ENVIRONMENT AND LAND CASE 23 OF 2015

KIPYEGON LOURIEN SEGUTON.....PLAINTIFF

VS

THOMAS CHEPKURGAT CHEBETDEFENDANT

J U D G M E N T

The Plaintiff, Kipyegon Lourien Seguton has sued Thomas Chepkurgat Chebet (*herein after referred to as the Defendant*) claiming that he is the owner of the parcel of land known as Tumeiyonin measuring approximately 20 Acres within Kuikui Location in Baringo County and that the Plaintiff used to do cultivation and later left it fallow for sometimes. He started clearing the land in 1960s and planted sisal trees on both sides setting the boundaries to be clear but the defendant trespassed into his parcel of land and removed them out, but the boundaries are very clear on the ground.

On March, 2014 the Plaintiff with some of his children took building material to construct a House on this parcel of land but while the plaintiff was roofing the structure with Iron Sheets the defendant incited his children and descended on the plaintiff and his sons and violence resulted and the plaintiff was chased and the defendant threatened his life. He reported the matter to the Area Chief and subsequently to the Police but later he was informed that they cannot determine the issue of Land unless a Court of Law. He cannot enter his land and continue to construct for fear of his life and the materials are getting wasted since there are timber, frames, posts and Iron Sheets on the ground and are being destroyed by termites and rain and are in risk of being stolen unless the defendant is restrained from chasing and threatening the life of the Plaintiff with his children. The defendant has put a simple structure on the plaintiff's land and now wants to claim that part of the land is his since the plaintiff left the farm fallow for sometime. The defendant has his own parcels of land elsewhere where he goes to cultivate and comes to reside on the plaintiff's parcel of land.

The defendant has no right to trespass to the Plaintiff's land and the plaintiff prays that the defendant be evicted and permanently restrained from entering or trespassing to the plaintiff's parcel called Tumeiyonin and also his agents, servants or children be restrained from trespassing the plaintiff's land.

The plaintiff aver that defendant has been warned to move but remained adamant. There is no other suit or proceedings pending in any court over the same subject matter concerning the same parties. The cause of action arose within the Jurisdiction of this Honourable Court. He prays for a permanent order restraining the defendant, his agents, servants or employees from cultivating, entering or interfering in anyway with the Plaintiff's parcel of land known as TUMEIYONIN within KUIKUI sub-location in Baringo North, Baringo County. A declaratory order of eviction against the defendant his agents, servants, or employees from the plaintiff's parcel of land known as TUMEIYONIN at Kuikui within Kuikui sub-location, Baringo North Sub-County, Baringo County. Costs of this suit to the Plaintiff. Any other or further relief that this Honorable Court deem fit to grant. The Defendant never entered appearance. The matter proceeded for hearing when the plaintiff testified that the land is his as he was given by Elders. There is an Elder called Abraham Ruto. He is deceased. The other side, there was an Elder called Cherop. At the lower side of his land land is a farm. In the middle is his place for construction. The upper side is for goats grazing. His wife became sick sometimes in 1987 and therefore he moved from the land with his children. In 1987, he went back and found his land had been taken away by Kiptum and Thomas Chepkurgat Chebet. He called elders who told him that the land was his. Mr Chebeywa told Elders that the land was the plaintiff's. The Elders found that the land was his. They did not minute. Mr. Kiptum moved away and left the the defendant in the land Plaintiff's land is known as

Tumeiyonin within Kuikui. The land is not adjudicated. Plaintiff's land is approximately 20 Acres but it is not measured. It is comprised of stones. The Defendant occupies the part of the land. Plaintiff do not live on the land. He moved out in 1970 and went back in 1987.

I have considered the Plaintiff's case and do find that the parcel of land claimed is not identified and that there is no evidence that the land under contention has been adjudicated however the plaintiff has established that the land was allocated to him by the elders. Mr chebet cherop also confirmed that the plaintiff was allocated the land by the Elders. I do find that the plaintiff has proved his case on balance of probabilities and therefore the suit succeeds. I do hereby grant a permanent order restraining the defendant, his agents, servants or employees from cultivating, entering or interfering in anyway with the Plaintiff's parcel of land known as Tumeiyonin within Kuikui sub-location in Baringo North, Baringo County. Further I do issue an order of eviction against the defendant his agents, servants, or employees from the plaintiff's parcel of land known as Tumeiyonin at Kuikui within Kuikui sub-location, Baringo North Sub-County, Baringo County. Costs of this suit to the Plaintiff.

DATED AND DELIVERED AT ELDORET THIS 19TH DAY OF AUGUST, 2016

ANTONY OMBWAYO

JUDGE