



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 62 OF 2012

RICHARD WAKWABUBI MAFWABI

(Suing as the administrator of the estate of the late

MAFWABI WASILWA NANDABI)..... PLAINTIFF

VERSUS

DAVID SIMIYU WANYAMA.....1ST DEFENDANT

BONFACE WACHIYE..... 2ND DEFENDANT

J U D G E M E N T

INTRODUCTION

1. The plaintiff is the administrator of the estate of his late father **Mafwabi Wasilwa Nandabi** (deceased) who was the registered owner of **LR. No. Saboti/Saboti Block 2/Muroki/74** and **76**. The plaintiff brought this suit against the defendants seeking an order of permanent injunction restraining them or their servants from in any way interfering with the two parcels (suitlands).

PLAINTIFF'S CASE

2. The plaintiff testified that the deceased got the suitlands by virtue of him being a member of **Muroki Estates Limited** which had purchased the land from a settler of European origin. **Saboti/Saboti Block 2/Muroki/74** is **16.46 Hectares** whereas **Saboti/Saboti Block 2/Muroki/76** is **0.3764 Hectares**.

3. The plaintiff further testified that the defendants invaded the suitlands and started fencing part of it claiming that the land they were fencing was reserved for a dam which is a public utility for the benefit of members of Muroki Estates Limited. He went on to state that Muroki Estates Limited had only surrendered **4 acres** to Muroki Coffee Growers Co-operative Society Limited where the society put up its factory.

4. The plaintiff contends that there is no plot which exists between the suitland and that the map which

the defendants exhibited showing that there exists **Plot No. Saboti/Saboti Block 2/Muroki/127** was a recent map and that in the original map, there was no such plot in existence.

DEFENDENTS' CASE

5. The two defendants contend that the suit against them is misconceived. That the first defendant owns **Plot No. Saboti/Saboti Block 2/Muroki/102**. The defendants testified that when Muroki Farm was subdivided, there was an area which was reserved for a dam which was to benefit the members of Muroki Farm. This plot was surveyed and it was given **LR. No. Saboti/Saboti Block 2/Muroki/127** measuring **2.400 Hectares**.

6. The first defendant is the chairman of Muroki Coffee Growers Co-operative Society Limited. There was a memorandum of understanding between Muroki Coffee Growers Co-operative Society Limited and a community based organization called Chemungo. The society gave Chemungo the land reserved for a dam so that it could carry out activities for the benefit of the members. Chemungo then approached the ministry of water resources to fund it. The ministry agreed to fund Chemungo. A surveyor came to the ground and marked the boundaries of the area reserved for the dam. Chemungo proceeded to fence the land but the plaintiff and his brothers came and removed the fence.

7. The ministry of agriculture funded Chemungo to the tune of **2.4 million**. A dam was started but soon thereafter there were wrangles which ended up in court. What had been done was vandalized. The defendants contend that it is the plaintiff who has encroached into the land reserved for a dam.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

8. There is no contention that the deceased is the registered owner of the suitlands. The plaintiff produced copies of titles and official searches for the two properties. Copy of title for **Plot No. Saboti/Saboti Block 2/Muroki/74** was produced as exhibit 1. A copy of title for **Plot No. Saboti/Saboti Block 2/Muroki/76** was produced as exhibit 2. Copies of official searches for the two properties were produced as exhibit 3(a) and (b) respectively.

9. The plaintiff is contending that there is no plot which exists between the suitlands and that the defendants' attempt to fence off the land is interference with the suitlands. Now the only issue for determination in this case is whether there exists **LR. No. Saboti/Saboti Block 2/Muroki/127**. Whereas the plaintiff claims that no land known as **LR. No. Saboti/Saboti Block 2/Muroki/127** exists, evidence adduced by the defendants show that that plot exists and it is **2.400 hectares**. An official search for that land was produced as defence exhibit 2. The search clearly shows that that land is reserved for a dam.

10. The plaintiff in his evidence claimed that the map which shows that there exists Plot No. 127 in between Plot No. 74 and 76 was prepared later. That the original map did not show the existence of that plot. The burden of proving this was on the plaintiff. The plaintiff did not adduce any evidence to show that Plot No. 127 which was reserved for a dam did not exist. He did not produce the original map which he claims exists to show that there was no Plot No. 127. In the absence of this, I do not see how the plaintiff can succeed in his case.

11. The first defendant is chairman of Muroki Coffee Growers Co-operative Society Limited. The second defendant is chairman of Chemungo, a community based organization (CBO) which had entered into an agreement with Muroki Coffee Growers Co-operative Society Limited to carry on activities for the benefit of the members. **DW5 Bernard Obimbo Ombiri** a sub-county water officer testified on how the CBO had been funded to the turn of 2.4 million but the project it was to undertake was frustrated by the wrangles which came up.

12. A county surveyor was sent to the ground and he carried out survey. He found out that it is actually the plaintiff who had encroached on to Plot No. 127 by 1.82 hectares. The surveyor's report was produced as defence exhibit 3. The report clearly shows the position of Plot Nos. 74, 76 and 127 on the ground. The encroached area has been shaded on the attached sketch to the report.

DECISION

13. Having found that there exists **Plot No. Saboti/Saboti Block 2/Muroi/127** which was reserved for a public dam and that there is no encroachment of **Plot No. 127** to either **Plot No. 74** or **76**, I find that the plaintiff has failed to prove his case against the defendants. The same is hereby dismissed with costs to the defendants.

Dated, signed and delivered at Kitale on this 20th day of September, 2016.

E. OBAGA

JUDGE

COURT

The court has been informed that the plaintiff died in March this year. His two wives are present in court. Judgement delivered in the presence of the two wives of the deceased plaintiff and both defendants.

Court Assistant - Isabellah.

E. OBAGA

JUDGE

20/9/2016