



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 59 OF 2004**

**JAMES LOKOR RIONOLIMA.....PLAINTIFF**

**VERSUS**

**SIMON LOKELIMA.....DEFENDANT**

**J U D G E M E N T**

**INTRODUCTION**

1. The Plaintiff is a beneficial owner of Plot No. 41 at Sook location in West Pokot County. He filed a suit against the defendant on 21/5/2004 seeking the following reliefs;-
  - (a) A declaration that he is the beneficial owner of all that parcel of land known as Plot No. 41 situated at Sook location of West Pokot County.
  - (b) An order of Permanent injunction restraining the defendant, his agents, servants and or those claiming through him from continuing to trespass into any part of the said Plot No. 41 (suit land).
2. The defendant was duly served with summons to enter appearance and file defence but did not do so. The case proceeded by way of formal proof. A judgement was delivered in favour of the plaintiff on 9/12/2010. The defendant engaged the services of a lawyer who applied to set aside the ex-parte Judgement. The ex-parte judgement was set aside. The defendant had initially engaged the firm of Anne Kibe & Co. Advocates. He later changed to David Ingosi & Co. Advocates. The firm of David Ingosi & Co. Advocates applied to court to cease acting for the defendant. This application was allowed on 28/7/2014. The plaintiff then took a hearing date and served the defendant. On the hearing date, the defendant did not turn up in court. The hearing proceeded in his absence after the court was satisfied that he was properly served.

**PLAINTIFF'S CASE**

3. The Plaintiff testified that in 1972 when he was in class three, the plots allocation committee allotted him land which was 35 acres. He was allotted the land because he was an orphan. In 1984, the plots which had been allotted were re-demarcated. The plot boundaries were marked by cutting the indigenous trees along the boundary.
4. In 1991 the defendant came to Sook location area and bought 4 acres from his neighbour. In 1995 the defendant went and put up a house on a plot belonging to a third party. He then annexed the area between where he has constructed a house and his four acres which he had bought. The area therefore became one stretch which in the process took about 4 ½ acres of the plaintiff's land. The

defendant then fenced the 4 ½ acres thus blocking the plaintiff's access to a watering area and pasture for his animals.

5. The Plaintiff made a complaint to the area District Officer who asked the defendant not to obstruct the plaintiff's access to the river and grazing area.

#### **ANALYSIS OF PLAINTIFF'S EVIDENCE**

6. The plaintiff produced a document [Exhibit 1] from Sook Land allocation committee showing that on 16/8/1984 there was re-demarcation by the committee which resulted in minor adjustments. The boundaries were marked by cutting tress along the boundary. He also produced a letter dated 12/1/2004 [exhibit 2] confirming that there was a dispute between him and the defendant.

7. The Plaintiff called PW2 Lotim Chuliokoi. This witness testified that he was among those who were in the demarcation committee in 1972. This witness testified that he has been aware about a dispute between the plaintiff and the defendant over the defendant's encroachment into the plaintiff's land. The evidence of the plaintiff has not been controverted as the defendant did not testify. The plaintiff has proved on a balance of probabilities that he was allotted Plot No. 41 at Sook location. PW2 who was present during the Plot allocation confirmed that indeed the plaintiff was given land and that he is aware that the defendant has encroached on to the plaintiff's land.

#### **DETERMINATION**

8. Having found that the plaintiff has proved his case against the defendant, I grant the following relief;-

(i) A declaration that the Plaintiff is the beneficial owner of Plot No. 41 at Sook location in West Pokot County.

(ii) A permanent injunction restraining the defendant, his agents, servants and anyone claiming through him from continuing to trespass into plot No. 41 at Sook location West Pokot County.

(iii) Costs of this suit.

**Dated, signed and delivered at Kitale on this 23rd day of April, 2015.**

**E. OBAGA**

**JUDGE**

**In the Presence of Mr Kisa for Mr Samba for Plaintiff. Court Clerk – Kassachoon.**

**E. OBAGA**

**JUDGE**

**23/04/2015**