



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 199 OF 2014

SIBILINA KURGAT.....PLAINTIFF

VS

AUGUSTINE KURGAT.....1ST DEFENDANT

JOHN KIBIWOTT MAIYO..... 2ND DEFENDANT

JUDGMENT

Sibilina Kurgat (*hereinafter referred to as the plaintiff*) sued Augustine Kurgat Kibiwott Maiyo (*hereinafter referred to as the 1st defendant and 2nd Defendants respectively*). The plaintiff and 1st defendant are a brother and sister while the 2nd defendant is the son to the 1st defendant. The plaintiff is a legal administratrix of the estate of her late father thus ***Kipkurgat Kiptongen Chemase***; having been appointed on the 16th March 2011 and confirmed on the 4th June 2012 vide Eldoret High Court P/A No. 276 of 2009. The plaintiff was appointed as the legal administratrix together with Emmanuel Kurgat who is a brother to both the plaintiff and the 1st defendant. The plaintiff avers that at all material times to this suit her deceased father was the legal owner of the parcel of land known as TEMBELIO/ELGEYO BORDER BLOCK 5 (EXTOOLEY)/203 as well as other parcels and that the plaintiff and her family had always been in occupation and use of a portion of the parcel of land known as TEMBELIO/ELGEYO BORDER BLOCK 5(EX-TOOLEY)/203.

She pleads that she petitioned the court for a grant of letters of administration to the estate of her late father and upon grant of the same parcel of land known as TEMBELIO/ELGEYO BORDER BLOCK 5 (EX-TOOLEY)203 was to be shared between herself and the 1st defendant in equal shares of approximately 4.9 acres each and she was to take the area within where she had been residing. The defendants jointly and severally have colluded to deny her the use and enjoyment of her portion and that the 2nd defendant with the total support and permission of the 1st defendant has threatened to enter into and to occupy and or plough the portion belonging to the plaintiff, without the plaintiffs consent. The defendants have jointly and severally refused to allow the surveyors to enter the land so as to place the beacons on the boundaries and have severally, maliciously and illegally chased away the surveyors for no apparent reason.

The plaintiff prays for judgment against the defendant jointly and severally for

An order or permanent injunction to restrain the 1st and 2nd defendants by themselves their agents and or servants from entering into, ploughing, constructing on, developing or in any other way dealing with the plaintiffs area of the portion of land measuring approximately 4.9 acres of the parcel of land known as TEMBELIO/ELGEYO BORDER BLOCK 5(EX-TOOLEY)/203 and a permanent injunction restraining

the defendants by themselves their agents and or servants from interfering in any way with the plaintiffs use and or enjoyment of her portion measuring approximately 4.9 acres of the parcel of land known as TEMBELIO ELGEYO BORDER BLOCK 5(EX-TOOLEY)/203.

For an order compelling them to allow the surveyors to enter the land so as to demarcate and place beacons on the boundaries and that the surveyors fees be shared equally. In the alternative an order of permanent injunction to restrain the defendants jointly and severally from obstructing the surveyors from entering the suit land to demarcate and to place beacons on the boundaries.

When the matter came up for hearing the plaintiff testified and produced a certificate of confirmation of grant issued to Emmanuel Kurgat and Sibilina Kurgat in respect of the estate of the late Kipkurgat Kiptongen Chemase. The same was confirmed by Hon. Lady Justice A. Mshilla on 4/6/2012. The schedule of the properties therein indicates that Augustine Kurgat and Sibilina Kurgat were to share the land known as TEMBELIO ELGEYO BORDER BLOCK 5(EX-TOOLEY)/203 measuring 3.850 Ha equally thus 4.9 acres each. Surveyors were given instructions to subdivide the parcel of land in dispute in view of the confirmation of grant. Application for consent to the Land Control Board in Moiben, Ainabkoi was made for the partitioning of 3.90 Ha into the Equal portions. The defendant however has refused to surrender the plaintiff's share despite the placing of beacons. The defendant has refused to vacate the plaintiff's share despite the area chief writing a letter to that effect. Her advocate also wrote to the defendant to vacate but he did not oblige.

PW1 William Kurgat gave evidence and relied on his statement in which he states that the defendants have invaded his matter portion of land and have refused to vacate.

I am satisfied that the plaintiff has made her case on a balance of probabilities and is entitled to the orders sought and therefore I do grant Judgment against the defendants jointly and severally in that a permanent injunction is hereby issued restraining the 1st and 2nd defendants by themselves their agents and or servants from entering into, ploughing, constructing on, developing or in any other way dealing with the plaintiffs area of the portion of land measuring approximately 4.9 acres of the parcel of land known as TEMBELIO/ELGEYO BORDER BLOCK 5(EX-TOOLEY)/203.

Secondly a permanent injunction is hereby issued restraining the defendants by themselves their agents and or servants from interfering in any way with the plaintiffs use and or enjoyment of her portion measuring approximately 4.9 acres of the parcel of land known as TEMBELIO ELGEYO BORDER BLOCK 5(EX-TOOLEY)/203.

Thirdly, an order is hereby issued compelling the defendants to allow the surveyors to enter the land so as to demarcate and place beacons on the boundaries and that the surveyors fees be shared equally.

Last and in the alternative an order of permanent injunction is hereby issued to restrain the defendants jointly and severally from obstructing the surveyors from entering the suit land to demarcate and to place beacons on the boundaries. The costs of this suit be borne by the defendants jointly or severally. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 9TH DAY OF APRIL 2015

JUSTICE OMBWAYO ANTONY

ENVIRONMENT AND LAND COURT AT ELDORET