



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT KITALE

E & L CASE NO. 57 OF 2013

PROF. ELIM LOKAPEL

**T/A TRANS AFRICA HIGH SCHOOL AND TRANS AFRICA
INSTITUTE OF ADVANCED
STUDIES**
..... PLAINTIFF

VERSUS

WILLIAM LOMORU}

JOHN LOCHINO.....}

JAMES MZEE KATOLI.....}

ESTHER AKIRU ADUI.....}

ETHEKON EDHAN AKIRONYA.....}

SELINA AKONO LOMENKUYA.....}

ESTHER EPASS AWOSIT.....}

HARON EKAI ECHWA.....}

EREMON ASUNYEN LIMANYANG.....}

REGINA AKIRU MATEING.....}

ITAU EKAI.....}

BENSON ESEKON EDUKON.....}

REBECA ATABO}
DEFENDANTS

J U D G M E N T

The Plaintiff Professor Elim Lokapel t/a Trans-Africa High School and Trans-Africa Institute of Advanced Studies brought this suit against the Defendants claiming the following reliefs:-

- i. A permanent injunction against the Defendants, their agents or servants from trespassing, encroaching, interfering, construction, or in any other way dealing with the Plaintiff's parcel of land at Kanamkemer, Lodwar.
- ii. An eviction order to remove the Defendants or their agents from the Plaintiff's parcel of land.
- iii. Costs of the suit.
- iv. Any other relief that this Honourable Court deems just and fit to grant.

The Defendants who were duly served with summons to enter appearance neither entered appearance nor filed defence. The Defendants also did not appear during the hearing. The hearing therefore proceeded ex-parte.

During the hearing, the Plaintiff who is a Professor teaching at Mount Kenya University testified that he is a Director of the two educational institutions based at Lodwar. He produced a copy of certification of registration in respect of Trans-Africa High School (*exhibit 1*). In 1992, the then Municipal Council of Lodwar allotted the Plaintiff's Institute of Advanced studies Plot No. 366. The letter allotting the Plaintiff the plot was produced as *exhibit 3*. Based on the allotment, the Plaintiff proceeded to Nairobi where he commenced the process of demarcation of the said land. On the 17th of May, 2011, the District Physical Planning Officer Turkana wrote to among other public bodies the Municipal Council of Lodwar seeking their comments in respect of a part development plan on the allotted plot. The letter and PDP were produced as *exhibit 4(a)* and *4(b)* respectively. The plot was subsequently demarcated and beacons put in place as confirmed by letter dated 16/12/2011 from the District Surveyor Turkana District (*exhibit 5*).

The Plaintiff has since been paying the land rates to the Municipal Council of Lodwar as confirmed by letter of 10/12/2012 from the Town Clerk (*exhibit 6*). The Plaintiff testified that the Defendants have since invaded his land because of the proposed development of the Northern corridor road and discovery of oil in Turkana. He now prays for a permanent injunction against the Defendants and an eviction order.

I have considered the Plaintiff's evidence including documents submitted in support thereof. This evidence remains uncontroverted. It is clear that the Plaintiff was allotted 75.3563 hectares. The plot hosts Trans-Africa High School and Trans-Africa Institute of Advanced Studies is under construction on the said land. The Defendants have no reason for invading the land. The Plaintiff has to be protected from the Defendants. I find that the Plaintiff has proved his case on a balance of probabilities. I grant a permanent injunction against the Defendants as prayed for in the Plaint. The Defendants should be evicted from the suit land forthwith. The Plaintiff shall have costs of this suit.

Dated, signed and delivered in Open Court on this 7th day of November, 2013.

E. OBAGA

JUDGE

In the presence of

Mr. Mutai for Plaintiff.

Isabella - Court Clerk.