



**Tundongar v Lodiny (Environment & Land Case 29 of 2023)  
[2024] KEELC 4607 (KLR) (11 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4607 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 29 OF 2023**

**FO NYAGAKA, J  
JUNE 11, 2024**

**BETWEEN**

**PEWAI TUNDONGAR ..... PLAINTIFF**

**AND**

**EZEKIEL LODINY ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff instituted this suit *vide* a Plaint dated 19/06/2023 and verified through his Affidavit sworn on the same date.
2. He pleaded that he and the defendants were blood brothers, the Plaintiff being the elder one and the Defendant the younger one. Their mother died while they were young and their father died in or about 2002. By the time his father died he had not acquired land. His further case was that he enrolled as a member of Chepkopegh Group Ranch as member No. 232. The Ranch land comprised in the title West Pokot/Chepkopegh/1. The Group Ranch had since applied for the dissolution in order to facilitate subdivision of the land to and issuance of individual titles.
3. In 1986 the land was demarcated and planned by the elders of Group Ranch committee and the Plaintiff together with his family took possession and occupation of their portion and they have used it to date. The defendant had never enrolled as a member of the group Ranch. After the demarcation was done the plaintiff allowed the defendant, on humanitarian grounds, to move onto the land permitted him to occupy a section of it to date.
4. During 2023, the defendant lodge a case with the Group Ranch, claiming part of the plaintiff's land. The Ranch Committee listened to the claim and ruled that the land belonged to the Plaintiff as a member of the Ranch and that the defendant should be satisfied with the portion the plaintiff had given him. The decision of the Ranch was ratified by the West Pokot County Land Adjudication and



Settlement Officer. The Plaintiff pleaded that he does not hold any land in trust for the defendant. He sought the following reliefs:-

- a. A declaration to be issued that the Plaintiff is a member of the Chepkopegh Group Ranch with a membership No. 232.
  - b. A declaration we should that the plaintiff is not holding the land demarcated for him by the group branch on 5th of September 1986 in trust for the defendant and further the land solely belongs to the Plaintiff.
  - c. An order that the defendant does pay the costs of the suit.
  - d. Interest.
  - e. Any other release that is honorable court may deem fit to grant.
5. When pleadings were served the defendant did not enter appearance, nor did he file a defence. Therefore, the matter proceeded by way of formal proof.
  6. At the hearing, the plaintiff testified that the defendant was his younger brother. It was the plaintiff who was a member of the Group Ranch and was assigned membership No. 232. He invited the defendant to live with him on the land but a section of it. He adopted the witness statement he wrote on 19/06/2023, in which he stated that in or about 1986 the land was demarcated to him by the elders of the Ranch. He and his family took possession thereof and has occupied it to date. The parcel of land was known as No. 232. His brother had never enrolled as a member of the Ranch. The Plaintiff only invited him on humanitarian grounds to come onto the land and permitted him to occupy a portion thereof.
  7. In 2023 his brother, the Defendant, laid a claim to part of the land. The case was heard by the Group Ranch officials and a ruling made. They decided that the land did not belong to the defendant, and he ought to be satisfied with the portion the Plaintiff had given him. The decision was ratified by the County Land Adjudication and Settlement Officer, but his brother has insisted that he wants to have an equal share. The Plaintiff produced a certificate of demarcation as P.Exhibit 1 and the drawing of the demarcation as P.Exhibit 2. He also produced the proceedings of the Committee on the case between him and the brother as P.Exhibit 3 and the decision of the Land Adjudication and Settlement Officer through a letter dated 09/05/2023, as P.Exhibit 4.
  8. That marked the close of both the Plaintiffs and Defence case. The plaintiff left it to court to decide the matter based on the evidence and the pleadings hence he did not submit.
  9. This court has carefully weighed the pleadings, the written witness statement, the oral testimony and the documentary evidence produced as P.Exhibit 1, 2, 3 and 4 in support of this case. The only issues for determination are whether the plaintiff has proved his on a balance of probabilities, and who to bear the costs of the suit.
  10. It is trite law that he who alleges the existence or otherwise of a fact must prove it unless the law lays the burden expressly on someone else. Section 107 of the Evidence Act is explicit on this fact.
  11. In the instant case the Plaintiff pleaded that he was a member of the Chepkopegh Group Ranch under No. 232 and was allocated parcel No. 232 which was demarcated to him in 1986. He then invited his brother the Defendant who came onto the land to live with him and he gave him a portion of it on humanitarian grounds. He produced as produced as P.Exhibit 1, 2, 3 and 4 evidence in support of the claim that he was a member of the Ranch, that the land was demarcated to him by the officials and a sketch drawn as such, minutes of a decision made on 18/02/2023 by the Ranch Committee elders about a case which the Defendant lodged claiming part of the land and the decision of the County



Land Adjudication and Settlement Officer through a letter dated 09/05/2023 ratifying the decision of the Committee.

12. I have carefully analyzed the documents. I find that indeed the Plaintiff has proved on a balance of probabilities that he was a member of the Group Ranch under No. 232 and was allocated the suit land by the Ranch. Further that the matter between the Defendant and him has been the subject of decision before the Group Ranch Committee and the County Land Adjudication and Settlement Officer both of whom have found parcel No. 232 of the Ranch to belong to the Plaintiff. I thus enter judgment for the Plaintiff against the Defendant as prayed in the Plaint, specifically in the following terms:-
- a). A declaration to be issued that the Plaintiff is a member of the Chepkopegh Group Ranch with a membership No. 232.
  - b). A declaration be issued that the plaintiff is not holding the land demarcated for him by the group branch on 05/09/1986 in trust for the defendant and further the land solely belongs to the Plaintiff.
  - c). Since the parties are blood brothers and the suit was not defended, each party to bear own costs.
13. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 11<sup>TH</sup> DAY OF JUNE 2024.**

**HON. DR. *IUR* FRED NYAGAKA**

**JUDGE, ELC KITALE**

