



REPUBLIC OF KENYA



KENYA LAW
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**Parashuru v Maseine & 9 others (Environment and Land Case Civil Suit
750 of 2017) [2023] KEELC 522 (KLR) (31 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 522 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 750 OF 2017
MN GICHERU, J
JANUARY 31, 2023**

BETWEEN

SAMUEL SOPON PARASHURU PLAINTIFF

AND

TAPORU MASEINE 1ST DEFENDANT
JOSHUA NKOIRISHISHE 2ND DEFENDANT
SALAASH NKOIRISHISHE 3RD DEFENDANT
KOIS OLE TEENU 4TH DEFENDANT
SETEI OLE SHOMPA 5TH DEFENDANT
NOAH NKUNKAT 6TH DEFENDANT
KAJIADO DISTRICT LAND REGISTRAR 7TH DEFENDANT
REGISTRAR OF TITLES 8TH DEFENDANT
COUNTY GOVERNMENT OF KAJIADO 9TH DEFENDANT
NATIONAL LAND COMMISSION 10TH DEFENDANT

JUDGMENT

1. The plaintiff seeks the following reliefs against the ten defendants both jointly and severally.
 - a. A declaration that the property Kjd/Lorngusua/2119 is owned by the plaintiff and he is entitled to its exclusive ownership, possession and enjoyment of the same pursuant to sections 24, 25, and 26 of the [Land Registration Act](#) (Act No 3 of 2012) as read together with article 40 of the [Constitution](#) of Kenya and that the 1st, 2nd, 3rd, 4th, 5th, 6th and 10th defendants have no legal right to trespass and their acts were merely acts of trespassers, null and void *ab initio*.



- b. An order of permanent injunction to restrain the same defendants from trespassing, entering, grazing animals, alienating, transferring, leasing, excavating, charging, disposing, erecting structures or committing acts of waste on the suit land or any part thereof or from interfering with the plaintiff's title and interest over the suit property.
 - c. Mesne profits in favour of the plaintiff and against the defendants from the date of interference or trespass until the date of judgment or such other date that the trespass is put to a stop.
 - d. Costs of the suit and interest thereon at court rates.
 - e. Any other or further relief.
2. The plaintiff's case is as follows. He is the registered owner of LR Kajiado/Lorngusua/2119. It measures 5.64 hectares. The parcel is a subdivision of LR 1173 which was partitioned to create the suit land and parcel No 2118 measuring 75.96 hectares.
 3. Recently, the first to sixth defendants trespassed onto the suit land grazed their livestock thereon and uprooted the fence without the authority of the registered owner. Again on December 8, 2015, the defendants demolished the plaintiff's perimeter fence on the suit land.
 4. The ninth defendant, the National Land Commission has waded into the dispute yet they have no jurisdiction because the land is privately owned as opposed to public ownership.
 5. In support of his case, the plaintiff filed the following evidence.
 - a. Witness statement dated December 14, 2018.
 - b. Witness statement by Lemumu Ntengese Napiruo dated February 24, 2021.
 - c. Copies of title deeds for LR 2118 and 2119.
 - d. Copies of demand letters dated October 31, 2021 and March 9, 2015.
 - e. Copy of letter dated September 22, 2015 addressed to the District Land Registrar Kajiado.
 - f. Mutation for LR 1173.
 - g. Copy of certificate of official search dated May 22, 2006 for the suit land.
 - h. Copy of certificate of official search dated September 23, 2009 showing that LR 1173 is registered in the name of the plaintiff.
 - i. Copies of photographs said to be remains of the perimeter fence for LR Kajiado/Lorngusua/2119.
 - j. Copy of register of members of Ilpartimaru Group Ranch.
 - k. Copy of area list of the same group ranch.
 6. Through their counsel on record, the first and sixth defendants filed a written statement of defence dated May 19, 2017. In the said defence, the defendants aver that even though the plaintiff is the registered owner of LR 1173 measuring approximately 75.96 hectares and which is a subdivision of LR Kajiado/Lorngusua/63, these subdivisions of LR 63 were cancelled by a decree issued in HCCC 561 of 2000. The title deed for LR 2119 having been issued in contravention of the court order cannot be indefeasible.
 7. In support of their defence, the first to sixth defendants filed the following evidence.



- a. Witness statements by the first and the sixth defendants.
 - b. Certified copy of the decree issued on July 19, 2000.
 - c. Copies of pleadings and rulings in HCCC Numbers 233 of 2001, 1098 of 2001 and 177 of 2008.
 - d. Copies of letters dated January 2, 2006, December 11, 2015, and October 6, 2015 and June 23, 2015 all of which concern the disputed land.
 - e. Minutes of a meeting held on May 5, 2011.
 - f. Photographs showing structures said to be within the trading center called Ilmarba.
8. The ninth defendant's counsel filed a notice of appointment dated April 4, 2018 and nothing else.
- I have not seen any memorandum of appearance by the Attorney General for the 7th and 8th defendants. The only filing by the Attorney General is written submissions dated May 31, 2022. The tenth defendant filed nothing at all.
9. At the trial on October 4, 2021, the plaintiff and his witness Lemomo Ole Ntenyese testified. In their testimony, they said that there is a 15 meter road separating the plaintiff's land from the trading center called Ilmarba and the defendants have crossed the road onto the plaintiff's land.
10. On the other hand, the first and sixth defendants defence is to effect that they have not built on the plaintiff's land but at the market which is far from the plaintiff's land. They accuse the plaintiff of grabbing the market all by himself when he has his own land next to the market.
11. Counsel for the parties filed written submissions on March 15, 2022, May 6, 2022 and June 6, 2022 respectively. The issues raised in the submissions are as follows;
- i. Whether the allocation of LR 1173 to the plaintiff was lawful?
 - ii. Whether the 1st to 6th defendants trespassed upon the suit land?
 - iii. Whether the plaintiff is entitled to the reliefs sought?
 - iv. Whether the plaintiff is the lawful owner of the suit land?
 - v. Whether the suit land is occupied by the first to sixth defendants?
 - vi. Whether the actions of the said defendants amount to trespass?
 - vii. Whether mesne profits and general damages have been proved?
 - viii. Who should bear the costs of the suit?
12. I have carefully considered all the evidence adduced by all the parties, the submissions by their learned counsel and the case law cited in the submissions and I make the following findings on the eight issues raised by counsel for the parties.
13. On the first issue, I find that the allocation of LR 1173 to the plaintiff is lawful. I say so because the plaintiff produced a copy of title deed for the suit land which is supported by two copies of certificates of official search dated May 22, 2006 and September 23, 2009. These documents are prima facie evidence that the plaintiff owns LR 1173. No evidence has been adduced by the defendants to dislodge this legal presumption.



14. On the second issue, I am not certain if the defendants have trespassed upon the suit land which according to the plaintiff is LR 2119 which is a subdivision of LR 1173. The reason for the uncertainty is that the plaintiff did not produce any official map showing his land parcel No 2119. Without such a map, it is not possible to determine if LR 2119 exists. Even though the plaintiff produced a copy of title deed for LR 2119, it is noteworthy that he did not produce any certificate of official search for it like he did for LR 1173.

More importantly, the evidence of the Land Registrar was necessary to prove trespass because the Land Registrar is the entity to determine boundaries. This dispute seems to be a boundary dispute between the larger parcel No 1173 and Ilmarba Trading Centre. Without the Land Registrar's evidence it is uncertain where LR 1173 ends and where Ilmarba Trading Centre begins.

15. I will skip the third issue and come to it later. On the fourth issue, I will reiterate what I said in dealing with the first issue. The plaintiff may be the owner of LR 1173 but its location vis-à-vis Ilmarba Trading Centre has not been ascertained.

16. Regarding the fifth issue, I find that it is not certain if the first to sixth defendants occupy the suit land for the simple reason that there is no report of the land registrar on the extent of the boundaries between the plaintiff's land and the market.

17. On the sixth issue, it is not proved that the action of the defendants amount to trespass because we do not know the extent of the boundaries.

18. On the seventh issue, I find that neither mesne profits nor general damages have been proved because trespass has not been proved in the first place. It is trite law however that trespass is action per se, that is to say without proof of damages.

19. On the penultimate issue of whether the plaintiff is entitled to the relief sought, I find that he is not because his case has not been established on a balance of probabilities for the reasons already given above.

20. Finally on costs, I find that they should follow the even and in this case, the plaintiff is unsuccessful in his case.

For the above stated reasons, the plaintiff's case is dismissed with costs to the defendants.

It is so ordered.

Dated signed and delivered virtually at Kajiado this 31st day of January, 2023.

M.N. GICHERU

JUDGE

