



**Sigei v Kabon (Environment & Land Case 516 of 2013)
[2023] KEELC 256 (KLR) (26 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 256 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 516 OF 2013
EO OBAGA, J
JANUARY 26, 2023**

BETWEEN

NIXON KPKEMOI SIGEI PLAINTIFF

AND

JACKSON CHEPKUTO KABON DEFENDANT

JUDGMENT

Background

1. The plaintiff filed this suit against the defendant on November 15, 2013 in which he claimed the following reliefs:-
 - a. A declaration that the plaintiff is the lawful owner of land parcel number Eldoret Municipality/Block 12/351 and that the defendant is a trespasser on the said parcel of land.
 - b. An order of permanent injunction permanently restraining the defendant either acting by himself, servant and or agent from constructing further and/or in any other way interfering with the plaintiff's land parcel number Eldoret Municipality/Block 12/351.
 - c. Costs of this suit.
 - d. Any other relief as the court may be pleased to grant.
2. The defendant filed a defence to the plaintiff's claim and raised a counter-claim in which he sought the following reliefs:-
 - 18(i) He is the rightful owner of a leasehold interest on land reference Eldoret Municipality/Block 12/351.
 - (ii) The plaintiff has no legally recognized claim on land reference Eldoret Municipality/Block 12/351.



19. The defendant seeks an order of injunction to prevent the plaintiff permanently from staking a claim on the land or in any way dealing with it.
3. The defendant amended his defence and counter-claim which only introduced a verifying affidavit which was missing in the original claim. The rest of the claim remained the same.
4. On November 7, 2018, the plaintiff withdrew his claim against the defendant. The court awarded the costs of the withdrawn suit to the defendant. What is therefore remaining for determination is the defendant's counter-claim.

Defendant's case;

5. The defendant who is now the plaintiff in the counter-claim testified that he is the registered owner of LR No Eldoret. Municipality/Block 12/351 (suit property). He produced a lease dated October 19, 1990 and an official search dated February 15, 2012. The rest of the documents such as certificate of lease and demand for rates and rates payment receipt were objected to and were only marked but were subsequently never produced.

Analysis and determination;

6. The parties were directed to file written submissions. The plaintiff filed submissions on November 1, 2022. The defendant filed submissions on August 15, 2022. I have considered the defendant's evidence as well as his submissions. I have also considered the submissions by the plaintiff. The only issue for determination is whether the defendant has proved his claim on a balance of probabilities.
7. The plaintiff having withdrawn his case against the defendant and having not testified against the defendant's suit, the defendant's evidence remains uncontroverted but this does not mean that he will automatically succeed. He was bound to prove his case to the satisfaction of the court.
8. The plaintiff having withdrawn his suit, he was not expected to submit as if he had a suit pending. Submissions are not evidence and they are only supportive of evidence adduced or in support of points of law. The plaintiff's submissions have been made in such away to suggest that there is an existing suit. This should not have been the case.
9. The defendant's evidence was not shaken in cross-examination. He is the registered owner and is the one in possession. He produced an official search showing that he is the registered owner. He has a lease duly stamped and registered. In the absence of any suit challenging this position, I find that the defendant has proved his case against the plaintiff now defendant in the counter-claim on a balance of probabilities.

Disposition;

10. In the final analysis I enter judgment for the defendant who is the plaintiff in the counter-claim as follows:-
 - a. A declaration that the defendant is the rightful owner of Eldoret Municipality/Block 12/351.
 - b. A declaration that the plaintiff who is defendant in the counter-claim has no legally recognized claim on Eldoret Municipality/Block 12/351.
 - c. An order of injunction preventing the plaintiff who is the defendant in the counter-claim from staking a claim over Eldoret Municipality/Block 12/351 or in any way dealing with it.
 - d. Costs of the counter-claim.



DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 26TH DAY OF JANUARY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Momanyi for defendant.

Mr. Ogongo for plaintiff.

Court Assistant –Akidor

E. O. OBAGA

JUDGE

26TH JANUARY, 2023

