

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

ELC CASE NO. 83 OF 2015.

MOSES WENANI ZAKARIA.....PLAINTIFF

VERSUS.

METRINE NEKESA MATUMBAL.....DEFENDANT

JUDGMENT

[1]. The plaintiff in this case filed this case and applied for an order of cancellation of title and a declaratory orders that the subsequent division of land Parcel Bokoli/Bokoli 1970 and the creation of Bokoli/Bokoli 2348, 2349 2412 2413 2414 and 2415 by the defendant be declared null and void and that those Subdivisions be cancelled and that the land do revert back to Bokoli/Bokoli/1970 in the names of the plaintiff.

[2]. The defendant was duly served with the summons to enter appearance and plead but he refused to enter appearance and/or file any defence. The Plaintiff requested for Judgment on 29th September, 2015 and an interlocutory Judgment was entered on 1/10/2015.

The case was fixed for formal proof for 15th May, 2017. On that date, the plaintiff duly proved his case. He told the court how on 8th February, 2005 the defendants herein vide Webuye Resident Magistrates Court a decision of land disputes tribunal was adopted as an order of the court to the effect that land Bokoli/Bokoli/1970 be subdivided.

[3]. The witness explained how he went to Bungoma High Court vide a Miscellaneous Application No. 165 of 2005 and those orders were quashed. That despite the quashing of those orders by the High Court the defendant went ahead and subdivided Bokoli/Bokoli/1970 into 2348, 2349, 2412, 2413, 2414 and 2415.

The plaintiff averred that those subdivisions were null and void. The plaintiff produced his Original title Bokoli/Bokoli/1970 dated 10/7/2003. High Court Succession Cause No. 58 of 2000, the order dated 24/6/2005 quashing the tribunals order and the Judgment of this ELC Court dated 16/7/2014 and the Search Certificates of the resultant Subdivisions.

Having perused all those documents, I am satisfied that Plaintiff has formerly proved his case. I allow his claim in the plaint as prayed.

Dated at Bungoma this 10th day of January, 2018.

Judgment read in Open Court in the presence of Mr. Were.

S. MUKUNYA

JUDGE.

In the presence of:

Chemutai - Court Assistant

Were for Mr. Kituyi for the Plaintiff

Defendant In person - Absent