



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ENVIRONMENT AND LAND COURT CASE. NO. 228 OF 2011

APPOLLINARIS BOSIRE NYAMARI PLAINTIFF

VERSUS

JOANNES ODERO OKWANYO 1ST DEFENDANT

SILAS NYONJE 2ND DEFENDANT

JUDGMENT

1. The plaintiff by a plaint dated 14th October 2011 filed in court on 19th October 2011 claims to be the registered owner of land parcels **Suna East/Wasweta I/5011** and **8702** having purchased the same from one Pius K. Okwanyo and holds title deeds issued to him on 16th December 1986 and 15th December 2004 for the two properties respectively (hereinafter referred to as the “suit property”). The plaintiff claims that the defendants have unlawfully encroached onto the suit properties and have unlawfully constructed a semi permanent house thereon and have blocked the plaintiff’s access road to his parcels of land. The plaintiff prays for judgment against the defendants jointly and severally for a mandatory and permanent injunction for the opening up of the road of access and restraining the defendants from in any manner interfering with the suit properties. The plaintiff also seeks an order of eviction of the defendants from the suit properties.
2. The defendants were served with summons to enter appearance together with the plaint as per the filed affidavit of service sworn by one Isaiah Miruka dated 31st January 2012 filed in court on 1st February 2012. The defendants did not enter appearance or file any defence. The court on 5th June 2014 when the matter was listed for pretrial directions gave directions that the plaintiff do set the suit down for hearing at the court registry. The matter was listed for formal proof before me on 8th February 2016 when the plaintiff and his advocate attended court and I allowed the hearing by way of formal proof to proceed.
3. The plaintiff testified placing reliance on his witness statement made on 14th October 2011 which he adopted as his evidence. The plaintiff explained that he purchased the two parcels of land **Suna East/Wasweta I/5011** and **8702** respectively from the 1st defendant in 1986 and 2004 respectively. The plaintiff stated he has occupied the parcels of land since he purchased them. The plaintiff testified that around 2007 the 1st defendant purportedly sold a portion of land to the 2nd defendant which encroaches onto the plaintiffs two parcels of land. The 2nd defendant as per the plaintiff’s evidence has built a semi permanent mud house on the plaintiff’s parcel of land which he uses as a store. The plaintiff avers that inspite of requesting the defendants to vacate his parcels of land they have neglected, failed and/or refused to do so. The plaintiff seeks orders as prayed in the plaint.
4. The plaintiff in his evidence produced copies of title in respect of land parcel **Suna East/Wasweta I/5011** registered in his favour on 16th December, 1986 and land parcel **Suna East/Wasweta**

I/8702 registered in the plaintiff's name on 15th December, 2004.

5. The plaintiff's evidence was not controverted in the absence of any evidence by the defendants. As per the evidence tendered by the plaintiff it is clear he is the registered owner of the suit properties. Sections 24, 25 and 26 of the **Land Registration Act, 2012** confers upon a registered owner or proprietor absolute rights and interest in respect of the land they are so registered. As owner, a registered proprietor of land has exclusive and unrestricted right of access and use of the land. Section 24 (a) of the **Land Registration Act, 2012** provides:-

24. Subject to this Act –

(a) The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;

Under Section 25 of the Act the rights of a proprietor are not liable to be defeated save as on the limited grounds provided under Section 26 (1) of the Act being, on the ground of fraud or misrepresentation to which the person is proved to be a party; or where the title has been acquired illegally, unprocedurally or through a corrupt scheme.

6. There is no challenge on the plaintiff's titles and in the absence of any challenge the plaintiff is entitled to have peaceful and unhindered enjoyment of his property rights. On the basis of the evidence adduced by the plaintiff, I am satisfied the defendants have encroached and/or trespassed onto the suit property. I hold the plaintiff's suit is proved on a balance of probabilities and I accordingly enter judgment in favour of the plaintiff in the following terms:-
- i. **That the defendants are hereby ordered to vacate and deliver vacant possession of land parcels Suna East/ Wasweta I/5011 and 8702 within 30 days of being served with the decree herein**
 - ii. **That in default of compliance with (i) above an order of eviction to issue on application against the defendants.**
 - iii. **The costs of the suit are awarded to the plaintiff.**

Judgment dated, signed and delivered at Kisii this 18th day of March, 2016.

J. M MUTUNGI

JUDGE

In the presence of:

..... for the plaintiff

..... for the 1st and 2nd defendants

J. M. MUTUNGI

JUDGE