



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ENVIRONMENT AND LAND COURT CASE NO. 472 OF 2014

JOSIAH ACHOCHI OBWORI PLAINTIFF

VERSUS

CYRUS ROSASI 1ST DEFENDANT

DANIEL ROSASI 2ND DEFENDANT

JUDGMENT

1. The plaintiff is the registered proprietor of land parcel **North Mugirango/Bokeira I/3096**. The plaintiff by a plaint dated 8th December 2014 filed in court on 9th December 2014 alleges the defendants have unlawfully entered into and occupied his parcel of land and seeks an order of eviction against the defendants and the costs of the suit.

2. The defendants did not enter appearance and/or file any defence after they were served with the summons to enter appearance. The suit was fixed for formal proof hearing before me on 29th February 2016. The defendants though having been served with the hearing notice as directed by the court did not attend the court for the hearing. The court permitted the plaintiff to proceed with the hearing ex parte. The plaintiff testified as the sole witness in support of the plaint.

3. The plaintiff testified that the defendants have unlawfully and wrongfully occupied his land parcel **North Mugirango/Bokeira I/3096** of which he is the registered owner. The plaintiff states that the defendants' mother had in 1972 stayed with the plaintiff for a period of 4 months in 1972 (February to June) after which she left and got married elsewhere. The plaintiff testified that the defendants went away with their mother but returned to lay claim to the plaintiff's said parcel of land which he was left by his father.

4. The plaintiff testified that his late father before he died had in 1980 subdivided his land parcel No. **North Mugirango/Bokeira I/1535**. The plaintiff stated that out of his father's land which altogether measured 2.6Hectares or thereabouts he was given 0.48Hectares or 1.2 acres in respect of which he obtained title being **North Mugirango/Bokeira I/3096** on 11th June 2014. The plaintiff testified that way back in April 2009 the defendants were ordered by the District Officer, Nyamira Division to vacate his land but the defendants did not do so. The plaintiff stated that he and the defendants in 2008 did a case before Nyamusi Land Disputes Tribunal being case No. 8 of 2008 which culminated to an appeal to the Nyanza Land Disputes Appeals Committee No. 48 of 2009 which resolved that the plaintiff was to be given 1.2acres out of land parcel No. **North Mugirango/Bokeira I/1535** that belonged to his late father and that the balance of the land was to be shared amongst the other family members including the defendants.

5. The Land Disputes Appeals decision was given effect by the Senior Principal Magistrate's Court Nyamira in Land Case No. 39 of 2008 when the court adopted the decision as a judgment of the court and subsequently gave effect to the judgment and caused the processing of the plaintiff's title in respect of **North Mugirango/Bokeira I/3096** in the plaintiff's favour following the subdivision of land parcel No. **North Mugirango/Bokeira I/1535**.

6. I have reviewed the evidence tendered by the plaintiff and the documents produced in support thereof and I am satisfied the plaintiff is the registered owner of land title **North Mugirango/Bokeira I/3096**. I am further satisfied the defendants have no interest in the parcel of land as their interest is in the portion of land parcel **North Mugirango/Bokeira I/1535** which remained after the plaintiff's said parcel was excised therefrom. The defendants have no reason to be or remain in the plaintiff's said parcel of land without his consent or permission. The plaintiff is as the registered absolute owner of the suit land entitled to exclusive possession and use of the suit property. The defendants' occupation and/or use of the plaintiff's said land is without justification and they ought to vacate and deliver vacant possession of the land to the plaintiff. The defendants ought to move to their own parcels of land.

7. The upshot is that I find the plaintiff's case proved on a balance of probability as against the defendants and I accordingly enter judgment in favour of the plaintiff on the following terms:

(i) The defendants to vacate and deliver vacant possession of land parcel North Mugirango/Bokeira I/3096 to the plaintiff within 30 days of being served with the decree herein failing which an eviction order to issue on application.

(ii) A permanent injunction be and is hereby issued against the defendants restraining the defendants, their agents and servants from trespassing and/or in any way interfering with the plaintiff's land parcel North Mugirango/Bokeira I/3096.

(iii) No order for the costs of the suit.

Ruling dated, signed and delivered at Kisii this 29th day of April, 2016.

J. M MUTUNGI

JUDGE

In the presence of:

..... for the plaintiff

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

J. M. MUTUNGI

JUDGE