



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

LAND AND ENVIRONMENT CASE NO. 35 OF 2014.

JOSEPH NALIANYA MUKHONGO.....PLAINTIFF/APPLICANT

VERSUS.

DAVID MASIKA MAFUMBO.....DEFENDANT/RESPONDENT

JUDGEMENT

[1] The main suit herein was dismissed by the court after the Plaintiff herein failed to prosecute his suit. His application to reinstate the same was dismissed by the Court on 10/12/2015. This case revolves around a boundary dispute in which the defendant herein claims that the Plaintiff has encroached a portion of his land Land Parcel E. Bukusu/N. Kanduyi/4212 which land comprises of 1.23 hectares.

[2] The defendant filed his counterclaim for Formal Proof. In his evidence the defendant told the Court that the Plaintiff has encroached on his land to the extent of 1.5 acres. He told the Court that he went to the County Land Registrar and paid the fees for boundary rectification but the Plaintiff has completely refused to attend and participate in such rectification by the Land Registrar. The defendant gave evidence that he has not sold any land to the Plaintiff. That it was his father that had sold land to the Plaintiff. He said that the Plaintiff has entered the defendant's land and is selling portions of the same to other people.

[3] The issue for the court to determine is whether the defendant is the registered proprietor of land parcel E. Bukusu/N. Kanduyi/4212 and whether the Plaintiff has encroached on a portion of the defendant's land.

[4] The records produced, title deed dated 31/12/2003 for E. Bukusu/N. Kanduyi/4212 is in the name of the defendant. The search certificate dated 17/5/2016 confirms the title is in the name of the defendant. He also produced Notice of determination of disputed boundary between Land parcel E. Bukusu/N. Kanduyi/4212 4146 and 4147 dated 6th April 2016 and served on all the owners of the said lands. These records establish that the respondent is the registered owner of E. Bukusu/N. Kanduyi/4212.

The defendant in his counterclaim states that the boundary of the land is not marked. The Court was not shown any surveyors record and or notes. I therefore order that the District Surveyor do carry out proper survey of the land and establish its boundary. He will establish if indeed the Plaintiff has encroached on the defendant's land. If the Plaintiff has so encroached the Plaintiff shall move and vacate out of the encroached area together with all developments erected therein.

There shall be liberty to apply.

It is so ordered.

Judgement in Open Court.

Dated, Signed and delivered on 20th September, 2016.

S. MUKUNYA

JUDGE.

In the presence of:

Joy/Gladys - Court Assistants

Mr. Ateya for the Plaintiffs

Mr. Bw' Onchiri for Onyando for the Defendant