



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA

ELC NO. 95 OF 2021

{Formerly at Environment and Land Court at Kisii Case No. 1225 of 2016}

JAMES ONYANGO ORIANGO.....PLAINTIFF

VERSUS

GUSII COUNTY COUNCIL.....1ST DEFENDANT

COUNTY GOVERNMENT OF NYAMIRA.....2ND DEFENDANT

ZACHARIAH ODIDA KISIMA.....3RD DEFENDANT

PATRICK MONARI.....4TH DEFENDANT

HEDSON NYALI.....5TH DEFENDANT

ATTORNEY GENERAL.....6TH DEFENDANT

RULING:

By a Plaint dated 23/10/1996, the Plaintiff prays for Judgment for;

- (a) A declaration that he is the owner of 9 Hectares out of land parcel: NORTH MUGIRANGO MAGWAGWA II/ 403 registered in the name of the 1st Defendant the same being ancestral land and/or acquired adversely.**
- (b) An order enjoining the 1st Defendant to transfer the same to the Plaintiff or in lieu executive officer of this Honourable court to do it.**
- (c) A perpetual injunction to issue against the Defendants and/or their agents or servants, to desist from interrupting the Plaintiff's quiet enjoyment of the land in issue.**
- (d) Damage for unlawful eviction and destruction of the Plaintiff's property aforesaid.**
- (e) Costs of this suit.**
- (f) Interest at court rates.**
- (g) Any further relief (s) deemed fit and just to grant.**

The Plaintiff claims that in 1964 his late father allocated him a well marked unregistered land measuring approximately 10 Hectares. The same was left in the custody of his (the Plaintiff's) uncle, **MARAO SAMBARE** and his mother **LOISE ODUKA**. In 1981 his said uncle had put of the unregistered interest 1.08 Hectares registered and sold to one **THOMAS MAEL MOGENI**. He was awarded Judgment in the High Court in Kisii HCCC NO. 98/1982 giving him ownership of the 1.08 Hectares only to later learn that the rest 9 Hectares had been merged with NORTH MUGIRANGO/MAGWAGWA II/403 registered in the name of the 1st Defendant, Gusii County Council. All the above were denied by the Defendants in their joint Defence dated 11/06/97. On 25/04/2001, the 3rd Defendant filed a separate Defence denying the averment in the Plaint. The Plaint was then amended in an amended Plaint filed on 30/06/2014 to substitute the 1st Defendant with the County Government on Nyamira. On 29/07/2021 the court ordered that: -

1. The Land Registrar and County Surveyor, Nyamira shall visit Parcel number NORTH MUGIRANGO/MAGWAGWA II/288, 403 AND 469 and delineate the boundaries.

2. The Report together with the sketch map to be filed in court within 30 days.

On 04/10/2021 the suit was transferred from Kisii to Nyamira. On 19/01/2022, the Land Registrar, Nyamira and County Surveyor, Nyamira filed their respective Reports with a map attached to the same showing that the 4.047 Hectares i.e. approximately 10 Acres of Plot No. NORTH MUGIRANGO/MAGWAGWA II/403 was set up and approved for development as a prison and funds set aside for that purpose. However, the Plaintiff has been occupying it and has been living thereon yet he has his own parcel of land which is separated from NORTH MUGIRANGO/MAGWAGWA II/403 by an access road. The Plaintiff is said to have encroached onto this parcel of land and built a semi-permanent house as well as planting trees on the area he has encroached of approximately 10 Acres. The same is public land.

In the premises, this being a case of encroachment and not a boundary dispute as envisaged under Section 18 (2) of the Land Registration Act, 2012. These Reports will form part of the evidence in this case which will proceed to full hearing. Any party is free to call the makers of the 2 Reports for Cross-Examination. This is the order of the court.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 28TH DAY OF FEBRUARY, 2022.

MUGO KAMAU

JUDGE

IN THE PRESENCE OF: -

COURT ASSISTANT: SIBOTA

PLAINTIFF: PLAINTIFF IN PERSON

DEFENDANTS: MR. NDEGE