



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**ENVIRONMENT & LAND CASE NO. 273 OF 2013**

**MARTIN KWEYU SUMBA ..... PLAINTIFF**

**VERSUS**

**ERNEST LURONGO AMBUNYA ..... DEFENDANT**

**JUDGMENT**

1. Martin Kweyu Sumba, (the plaintiff), sued Ernest Lurongo Ambunya (the defendant) seeking to have the defendant and his agents vacate his parcel of land known as SOUTH WANGA/MUSANDA/1503 and a permanent injunction restraining the defendant and his agents from interfering with the plaintiff's property rights.
2. The plaintiff pleaded that he is the registered proprietor of the suit land measuring approximately 0.4 Hectares. That the defendant has without the consent of the plaintiff entered on the plaintiff's parcel of land, taken possession and built some illegal structures thereon, thereby interfering with the plaintiff's quiet enjoyment of the suit land.
3. The plaintiff therefore prays that the defendant and his agents be evicted from his land and the structures constructed on the land be demolished.
4. The defendant was served with summons to Enter Appearance and appeared through the Firm of Makokha Oaka & Co. Advocates but did not file a defence. The plaintiff applied for and had an Interlocutory Judgement entered in his favour on 10/7/2014. The matter was then fixed for directions.
5. On 2/10/2014, the matter came before me and was adjourned to 16/10/2014 for mention and I directed that service be effected on the defendant. When the matter came before me again on 16/10/2014, I set it down for hearing on 3/11/2014 and once again directed that the defendant's counsel be served.
6. On 3/11/2014, the matter was listed for hearing but once again neither the defendant nor his counsel attended court. The matter therefore proceeded for hearing ex-parte.
7. The plaintiff testified in court and adopted his statement recorded on 24/9/2013 as his evidence before court. According to the statement, the plaintiff purchased one (1) acre piece of land from Wycliffe Lurongo, which was excised from land parcel S/Wanga/Musanda/1499. The portion sold to the plaintiff was registered in his name as Parcel Number S/Wanga/Musanda/1503, measuring approximately one (1) acre. The cost of land was Kenya Shillings 125,000/= which consideration was paid in full.
8. The plaintiff testified that the defendant has entered his land without any right and constructed structures on this land. He therefore asked the court to order the defendant's eviction. The plaintiff produced in evidence the Title Deed for Parcel No. S/Wanga/Musanda/1503 as P.Exh.1. He also

produced a demand letter written by his advocate to the defendant dated 25/9/2013 as P. Exh.2 to show that the defendant had neglected his demand that he vacates his land.

9. I have considered the plaintiff's evidence tendered and exhibits produced in court. The plaintiff has sought to have the defendant evicted from the suit land and the structures erected thereon demolished. The plaintiff has testified that he is the registered proprietor of the suit land and has produced a title Deed to that effect. The title Deed (P.Exh.1) clearly shows that the plaintiff is the registered proprietor of the land measuring approximately 0.40 Hectares. The parcel of land was registered in the plaintiff's name on 7/5/2012 and a Title Deed issued in his name on 17/5/2012.

10. From the evidence adduced and the exhibits produced, the plaintiff is, Prima facie, the registered owner of the suit land. **Section 25 (1) of the Land Registration Act (No. 3 of 2012)**, the legislation governing land registration in this Country provides as follows;

***S. 25 (1) "The rights of a proprietor whether acquired on first registration or subsequently for valuable consideration or by order of court, shall not be liable to be defeated except as provided in this Act and shall be held by the proprietor together with all privileges and appurtenances belonging thereto free from all other interests and claims whatsoever, but subject to;***

***(a) .....***

***(b) Such liabilities, rights and interests as affect he same and are declared by Section 28 not to require noting on the register, unless the contrary is expressed in the register."***

11. Although served, the defendant did not participate in these proceedings and therefore did not bring forth his claim, if any, on the plaintiff's parcel of land. The plaintiff has his rights clearly protected by Section 25 (1) of the Act and the defendant's actions are those of a trespasser and cannot be allowed.

12. Furthermore, Section 26 (1) of the Act provides as follows;

***S. 26 (1) "The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor, shall be taken by all courts as Prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements restrictions and conditions contained or endorsed in the certificate, and the title of the proprietor shall not be subject to challenge, except***

***(a) On the ground of fraud or misrepresentation to which the person is proved to be a party to, or***

***(b) Where the certificate of title has been acquired illegally, un-procedurally or through corrupt scheme."***

13. The plaintiff has produced a title Deed signifying that he is the owner of the suit land. I have no evidence to doubt his ownership. I have no evidence to show that the land was acquired in a manner that is not allowed under the law and I therefore cannot doubt the plaintiff's ownership to this land.

14. The defendant has not come forward to justify his actions of entering and remaining on the plaintiff's parcel of land. He is a trespasser in law and his actions are therefore illegal. Those actions are an affront to the rule of law and infringe on the plaintiff's Constitutional right to property.

15. I am satisfied that the plaintiff has proved his case on a balance of probability and I enter judgment in favour of the plaintiff against the defendant and make the following final orders;

1. An order is hereby issued directing the defendant whether by himself, his agents, employees,

servants and or any other person claiming through the defendant to move out and render vacant possession of **LR. No. S/WANGA/ MUSANDA/1503** to the plaintiff within six (6) months from the date of this judgment and in default the defendant and his agents should be forcibly removed from the suit land and their structures demolished.

2. A Permanent Injunction is hereby granted restraining the Defendant by himself, his agents, employees, servants and any person claiming through the defendant from interfering with the plaintiff's property.

3. Costs of the suit to the plaintiff.

*Dated and delivered at Kakamega this 23<sup>rd</sup> day of January, 2015*

**E. C. MWITA**

**J U D G E**