



**REPUBLIC OF KENYA**

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

**LAND AND ENVIRONMENT CASE NO. 320 OF 2013**

**DR. CALEB WASWA WAUDO WANGA.....PLAINTIFF**

**VERSUS**

**KASSIM JUMA.....DEFENDANT**

**JUDGMENT**

[1]. One Juma Masinde the father of the defendant died. A succession cause was filed by the deceased daughter Mary Nafuna Juma vide Kakamega Succession cause No. 905 of 2007. A certificate of confirmation of grant was issued by the court on the 26<sup>th</sup> day of July 2011. The heirs and their shares in Bunyala/Sidikho/535 were identified as follows;

Wilson Wamalwa	2.5 Acres
Hassan Wasilwa	2.5 Acres
Kassim Juma	2.5 Acres
Francis Wanyonyi	2.5 Acres
Mary Nafuna Juma	2 Acers
Angelina Wawire	2 Acres
Felista Nekesa Wanyama	2 Acres

[2]. The plaintiff bought the shares of Angelina Wawire, Mary Nafuna Juma and Felister Nekesa which were registered in his name as land parcels Bunyala/ Sidikho/2094, 2095 and 2096. The properties were bought for a consideration for Kshs, one million.

[3]. The defendant who had inherited 2.5 acres which later became Bunyala/Sidikho/2097 encroached on the lands purchased by the plaintiff. He insists that he is in Bunyala/Sidikho/535 the original piece which belonged to his father and which was subject to the succession cause. His argument is that his step sisters have no land since they are married. He said he has sixteen children which he got when he was on the land. Mr. Hassan Pelito his witness told the court that the land belongs to the sons and not the sisters.

[4]. The plaintiff's case of eviction was supported by Mary Nafula Juma who was granted the letters of administration by the court. She explained how she and her two sisters inherited a total of 6 acres which they sold to the plaintiff. The inheritance was from land parcel Bunyala/Sidikho/535. She said the

plaintiff is not using the land because the defendant has invaded the same and prevented the plaintiff user of his land. She narrated to the court how they went to Amagolo before the chief and the defendant agreed to move out but later changed his mind and he stays there to date.

[5].The plaintiff has brought this suit demanding that the defendant do move and vacate out of the three parcels of land. He also prays for an eviction order against the defendant to move and vacate out of the suit lands.

[6]. Land parcels Bunyala/Sidikho/2094, 2095 and 2096 were inherited by their respective owners the three sisters (and subsequent vendors to the plaintiff) vide Kakamega succession cause No. 905 of 2007. Pursuant to the distribution on that cause titles were issued and transfers done to the plaintiff. Anyone who was dissatisfied with the distribution was free to challenge the same in that cause. There is no dispute between the plaintiff herein and the three sisters who sold the lands to him. The invasion of the suit land by the defendant has no basis and or reasonable foundation. He has his own land Bunyala/Sidikho/2097. The argument that the defendant is in his father's original parcel Bunyala/Sidikho/535 now extinguished by the succession cause aforesaid has no basis and it is misplaced.

[7]. The defendant shall immediately move out and vacate land parcels Bunyala/Sidikho/2094, 2095 and 2096. He shall give the plaintiff quiet enjoyment of his lands. If he does not do so he shall be forcefully evicted therefrom at his own costs by the court bailiff with the assistance of the nearest police station and Administration Police officers.

The plaintiff shall have the costs of this suit.

Dated at Bungoma this 29<sup>th</sup> day of **JULY 2015.**

**S. MUKUNYA**

**JUDGE.**