

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

ENVIRONMENT AND LAND CASE NO. 343 OF 2013

GLADYS NASIMIYU LUKA... .. PLAINTIFF/APPLICANT

VERSUS

MOSES WANJALA KHISADEFENDANT/RESPONDENT

JUDGMENT

[1]. The plaintiff GLADYS NASIMIYU LUKA is the registered owner of land reference number E. Bukusu/N.Kanduyi/6920. She was registered as the owner of the same on 4th June 2013. The land was previously owned by Gaudencia Mutenyo Webale who obtained the consent of the Bungoma Land Control Board to transfer to her on 12th February 2013. She has certificate of title.

[2]. Her claim against the defendant is that the defendant in this case without any claim of right has encroached and entered her land where he constructed a house and planted crops therein without any regard to the owners interests. She said that all her efforts to have the defendant move and vacate her land and to demolish the structures he has erected therein has failed. She asks for an order of permanent injunction restraining the defendant, by himself, servants or agents or otherwise from interfering with possession and use of land parcel No. E. Bukusu/S. Kanduyi/6920 in any manner.

[3]. In her evidence, she said the plaintiff has his own land. That the defendant invaded her land. She produced all documents to show that she is the legal owner of the land. She stated that she was given the land by Gaudencia Mutenyo the wife of her father.

She called Joseph Webala Wahichu who said he lives at Kiminini and that he knows the plaintiff. He said that the defendant invaded the land of the plaintiff. He stated that the defendant has his own land. On cross examination, the witness said that he was the brother to the defendant's father. That he entered the plaintiffs land by force.

[4]. That the defendant has his own land. The defendant in his defence said that the land was not the plaintiffs but his . That he lives on parcel no. 567. That parcel 567 was the original parcel and the suit land is the subdivision of the said parcel 567.

[5]. After having heard the parties, I am convinced, on the balance of probabilities, that the defendant has entered the plaintiff's land without any colour of right. I am also convinced that he has his own piece of land where he should stay. The proprietary rights of the plaintiff should be respected. She should be left alone to enjoy the same without any interference by the defendant.

[6]. I do order that the defendant do move and vacate out of the plaintiffs land. He shall remove all his structures therein. If he shall not do so within 30 days he shall be forcibly evicted by the court bailiff of this court. He shall be responsible for the costs of such eviction if he does not do so in the time herein stated.

[7]. A permanent injunction is issued against him, preventing his servants and agents from interfering with the plaintiffs land, the plaint is granted as prayed therein.

The plaintiff shall have the costs of this suit.

DATED at BUNGOMA this 22nd day of September 2015.

S. MUKUNYA

JUDGE