



**REPUBLIC OF KENYA**

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

**LAND AND ENVIRONMENT CASE NO. 164 OF 2013**

*[Formerly Bungoma cmcc no. 898 of 2011]*

**JOSEPH MASINDE BUSURU .....PLAINTIFF**

**VERSUS**

**PLAYTON LEONARD WEKESA ..... 1<sup>ST</sup> DEFENDANT**

**PAUL KITUYI NGOSIA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

[1].The plaintiff filed this suit against the defendant and alleged that the 1st defendant unlawfully and without colour of right trespassed on land parcel no. Ndivisi/Ndivisi/1725 and planted sugar cane and maize thereon without the consent and/or authority of the plaintiff. That the 1st defendant has denied the plaintiff access of his land and that the plaintiff has suffered loss. The plaintiff therefore sued for a permanent injunction restraining the defendant whether by himself, his agents, servants and/or relatives from tilling, ploughing, trespassing or attempting to trespass and remaining on the aforementioned parcel of land and he prays for removal and/or cancellation of the caution lodged on the said land and declaring the plaintiff as the absolute registered owner of the suit land Ndivisi/Ndivisi/1725.

[2].The defendants filed a joint defence. The 1st defendant contends in his defence that he utilizes the suit land. That he purchased the same from Lawrence Simiyu Nandasaba, Judith Wafula Simiyu and Mershack Nandasaba. The defendant further avers that he bought the suit land in 1994 and has resided on the suit land and has thus acquired proprietary rights under adverse provision.

[3]. When this case came up for hearing the plaintiff appeared but the defendant did not appear. He was served with the hearing notice on 18.5.2015. The plaintiff Mr. Joseph Masinde Busulu gave evidence and he said he sued the defendant as the one who took his land and prevented him from working on his land Ndivisi/Ndivisi/1725. He said he has a title and was issued on 12.2.2009. He said he paid the entire purchase price. He said the land was a subdivision of land parcel Ndivisi/Ndivisi/220. He produced green card of the same. The plaintiff said that he was aware of civil case no. 26 of 2010 in which the 1<sup>st</sup> defendant has sued one Lawrence Simiyu Nandasaba for a refund of kshs. 70,000/= purchase price. He produced the pleadings of that case as plaintiff exhibit 8. He prayed for the orders prayed in his plaint and for a removal of the caution imposed on his land by the defendants. He asked for the costs and mesre profits from 2009 to now.

[4]. The plaintiff called his witness Margaret Nandasaba who said that she was a witness of the sale agreement between the plaintiff and the seller who was her husband. She told the court that the plaintiff paid all the money and was given the title. However she said that the land now is being used by the 1<sup>st</sup> defendant. She averred that the land was never sold to the 1<sup>st</sup> defendant.

[5]. The 2<sup>nd</sup> witness was Mr. Lawrence Simiyu Nandasaba who said that he was also a witness in the agreement on 14.1.2009. he said that his father sold one (1) acre to the plaintiff for Kshs. 190,000/=. He said that he knew of a case at Webuye where he has been sued for Kshs. 80,000/- by the defendant. That, that case was about purchase price of parcel Ndivisi/Ndivisi/1725 where the 1<sup>st</sup> defendant herein needs refund. That the case is still pending at Webuye. He stated that the land is being used by the 1<sup>st</sup>

defendant who is now preparing to plant sugar cane. He said that the land Ndivisi/Ndivisi/1725 belongs to the plaintiff.

[6]. After the close of the plaintiffs case the defendant who was not present and who was aware of the hearing date offered no evidence. The counsel for the defendant prayed that the case for the defendant be deemed as closed. And it was so closed and the suit was set down for judgment today.

[7]. Having heard the evidence of the plaintiff and the witnesses and there being no contrary evidence from the defendant I am convinced that the plaintiff has proved his case on the required standards and I allow the prayers in the suit. Other than the prayers of mesne profit since none was proved before me. The plaintiff shall have the costs of the suit.

DATED at BUNGOMA this 28<sup>th</sup> day of October 2015.

**S. MUKUNYA**

**JUDGE**