

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA

ELC. NO. 16 OF 2014.

PHILIMONA MAINA BUSHURU.....PLAINTIFF

VERSUS

QUINTO ESIKE OJALA.....DEFENDANT

J U D G M E N T.

1. By a plaint filed here on 20th February, 2014, the plaintiff – **PHILIMONA MAINA BUSHURU** – claims that the defendant – **QUINTO ESIKE OJALA** – has encroached on his land – L.R. NO. BUKHAYO/LUBIDA/2289 – and erected a semi-permanent house. He wants the defendant evicted. He also wants costs of the suit.

2. From the plaintiffs statement on record and from his testimony here on 12th October, 2015, it is clear that the plaintiff is the registered owner of the land, having bought it from on **ERDWELL EMARAA OKISAI**. It appears clear that at the time of purchase, the land parcel was BUKHAYO/LUBIDA2289. The defendant appears to have been a purchaser just like the plaintiff. His parcel of land is different and it appears clear that during sub-division, the defendant’s semi-permanent house happened to be on the plaintiffs land. The plaintiff’s efforts to have the house removed have not borne fruit, hence this suit.

3. In the course of hearing, the plaintiff availed the following exhibits.

- i. Sale agreement (plaintiff exhibit No. 1)
- ii. Title deed (plaintiff exhibit No. 2)
- iii. A copy of search certificate from the relevant lands office (plaintiff exhibit No. 3)

4. It appears clear that the defendant was served. He was served first by one **HILLARY OKANGA ONGWETE**. The plaintiff is said to have accepted the service and even signed the documents. Despite service however, the plaintiff didn’t enter appearance and/or file defence. Interlocutory judgment was then asked for and records show that such judgment was entered on 18th March, 2014.

5. The matter then was to come for formal proof and records show that even for this, the defendant was served. Such service was one time effected by one **STANSLAUS MULWOTO** on 19th June, 2014. Another such service was done on 27th February, 2015 by the same person while the last one for hearing on 12th October, 2015 was effected on 16th July, 2015. The court heard this matter on 12th October, 2015. The defendant did not come.

6. It is sufficiently clear the defendant has been served several times. He did not respond to the suit. He did not come for hearing. The plaintiff has shown he is the registered owner of the land. He has also shown that the defendant has encroached. His case is proved. He has to get the orders he is seeking. Accordingly, he gets an eviction order in terms of prayer (a) in the plaint. But I direct that he first give the defendant a 3 – months eviction notice. If the defendant does not remove himself from the land within that period, he can be forcibly evicted. The plaintiff also gets costs in terms of prayer (b) in the plaint.

A.K. KANIARU,

JUDGE

DATED AND DELIVERED ON 10TH DAY OF DECEMBER, 2015

IN THE PRESENCE OF;

PLAINTIFF.....

DEFENDANT.....

COUNSEL.....JUMBA FOR LUCHIVYA PRESENT.