

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

LAND AND ENRIRONMENT NO: 33 OF 2013

HENRY INGABO LUKWA.....PLAINTIFF

VERSUS

ESAU MAINA.....1ST DEFENDANT

PRISCAH ANYEMBE.....2ND DEFENDANT

R U L I N G

The application dated 19th June 2013 seeks restraining orders against the defendants in respect of Plot number **BUTSOTSO/SHIKOTI/16044**. The application is supported by the plaintiff's affidavit. The defendants filed a replying affidavit sworn by the first defendant on 16th July 2013.

Mr. Khayumbi, counsel for the applicant relied on the application while the respondents relied on the replying affidavit. The applicant is the registered owner of the suit land and annexed a copy of his title deed. He contends that the respondents destroyed his fence on 15/6/2013 by uprooting the fencing trees. On his part, the 1st defendant has denied that he destroyed the boundary or that he trespassed on the plaintiff's land.

Since the plaintiff is the registered owner of the suit land and the defendant is not claiming any part of that land or a right to occupy the land, I do find that the applicant has established a prima facie case with a probability of success. The applicant is entitled to enjoy his right to occupy his land free from any disturbance from the defendants. The application is merited and is granted as prayed. Costs in the cause.

Dated, signed and Delivered at Kakamega this 26th day of February 2014.

SAID J. CHITEMBWE

JUDGE