

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC NO. 145 OF 2013. (FORMER HCC. 13 OF 2009)

WILSON OKOTCH OMBUJE.....PLAINTIFF

VERSUS

IBRAHIM AUMA & 3 OTHERS..... DEFENDANT.

J U D G M E N T.

WILSON OKOTCH OMBUJE, the Plaintiff, suing as a legal Representative of the estate of Ombuje Odowa Wesonga, filed this suit against Ibrahim Auma, Charles Odiokho, Geoffrey Opiyo and Martin Sikuku hereafter referred as 1st to 4th Defendant seeking for an order of injunction to restrain defendants, their families, agents, servants from plot number 83, Bunyala Irrigation Scheme. The Plaintiff also seeks for costs and avers that, the plot belonged to Ombuje Odowa Wesonga now deceased and that he has been appointed the administrator of the deceased's estate vide Busia HCC. Succession Cause No. 223 of 2008. That on or about 13th March, 2009 the Defendants forcefully and without consent entered onto the plot and have declined to vacate and hence this suit.

The Defendant did not enter appearance nor attend court for the hearing even after being personally served with summons to enter appearance. Mr. Wanyama advocate appeared for the plaintiff. During the hearing the plaintiff testified as PW1 and presented his case. He told the court that after his father's death, he visited the Bunyala Irrigation Scheme and was entered in the records of plot 83 which belonged to his father, to represent him. The Defendant s encroached onto a portion of the plot. He instructed his advocate to write to the defendants and the advocate did a letter dated 26.11.2006. He also filed H.C. P & A No.223 of 2008 and was appointed the administrator of his father's estate and communicated this fact to the Defendant through letter dated 6.2.2009. The Defendants did not stop using the portion of about two acres they had taken and hence this case.

The court has considered the pleadings filed by the plaintiff, evidence tendered by the Plaintiff and submissions by counsel and make the following finding:

1. That the Defendants were duly served with suit papers in this matter and were also notified of the filing of the related Succession Cause but filed no papers in objection to the proceedings initiated by the Plaintiff herein.
2. That the evidence adduced shows that plot number 83 at Bunyala Irrigation scheme was used by the plaintiff's father Ombuje Odowa Wesonga until his death.
3. That Plaintiff herein is the administrator of the estate of Ombuje Odowa Wesonga having been so appointed in Busia H.C. Succession Cause No. 223 of 2008 on 4th February, 2009.
4. That the estate of Ombuje Odowa Wesonga was on 7th October, 2010 distributed in the said Succession Cause and plot number 83 given to Wilson Okotch Ombuje and Stephen Odowa Ombuje as confirmed in the certificate of confirmation.
5. That the Plaintiff case against the Defendants stand unchallenged and the court finds that the Plaintiff had proved his case on a balance of probabilities and should get the order of injunction sort.

As such the court enters judgment for the plaintiff against the Defendants in terms of prayers (a) and (b) of the plaint dated 20.12.2008.

It is so ordered.

S. M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 26TH DAY OF MARCH,2014.

IN THE PRESENCE OF;

JUDGE.