



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 13 OF 2012

RUTH NJOKI KAGERA PLAINTIFF

VERSUS

SIMON KAMAU NG'ANG'A DEFENDANT

JUDGEMENT

INTRODUCTION

1. The Plaintiff and the defendant are owners of Plot No. Moi's Bridge/Moi's Bridge Block 9 (Nzoia sisal) 95 measuring 2.22 hectares and Moi's Bridge/Mo's Bridge Block 9 (Nzoia Sisal 30) measuring 0.046 hectares respectively. The two parcels of land are adjacent to each other.
2. The plaintiff brought this suit against the defendant seeking a declaration that she is the sole proprietor of L.R. No. Moi's Bridge/Moi's Bridge Block 9 (Nzoia sisal) 9. She also prays for a permanent injunction restraining the defendant from trespassing and or interfering with her quiet user of the said land.

PLAINTIFF'S CASE

3. In the pleadings, the plaintiff contends that in October, 2012 the defendant without any justifiable reason trespassed on to her land and started constructing a pit latrine on it. She demanded that the defendant stops his actions but the defendant never heeded the demands.

DEFENDANT'S CASE

4. The defendant in his defence denied the allegations of the plaintiff in her plaint and put her to strict proof.

EXPERT EVIDENCE

5. On 20/2/2013 the parties herein agreed to send a Government Surveyor to the two parcels of land in order to ascertain if there was any encroachment on either side. The District Surveyor for Uasin Gishu visited the two parcels and carried out a survey in the presence of both parties. He compiled a report which was filed in court on 7/5/2013.
6. The counsel for the parties herein agreed to call the surveyor to come and explain his findings. On 31/7/2013 the surveyor John Mukhwana came and testified and explained his report. He testified that when he went to the ground in company of his colleagues, they found that the defendant had encroached on to the plaintiff's land by 9.146 square metres.

7. The surveyor testified that the encroachment was evident as it had formed a T-shape at the boundary between the plaintiff and the defendant's parcels. Attached to the surveyor's report was a drawing with a shaded area showing the encroached part. It is evident from the drawing that the plaintiff's land borders 20 other plots to the right with a straight boundary except the defendant's plot which has eaten into the plaintiff plot thus interfering with the boundary which should have been straight.

DECISION

8. From the surveyor's findings, it is evident that the defendant has encroached onto the plaintiff's land. I find that the plaintiff has proved her case on a balance of probabilities. A permanent injunction is hereby issued against the defendant from in any way interfering with the plaintiff's plot which should be in her sole possession. The defendant should relinquish the encroached portion. The plaintiff shall have costs of the case and interest.

Dated, signed and delivered at Kitale on this 29th day of May, 2014.

E. OBAGA

JUDGE

In the presence of Mr Karani for Mr Ingosi for Plaintiff. Court Clerk Kassachoon.

E. OBAGA

JUDGE

29/5/2014