



**REPUBLIC OF KENYA**

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

**ENVIRONMENT AND LAND CIVIL CASE NO. 90 OF 2013**

FREDRICK JOSHUA ONYIEGO ..... PLAINTIFF

VERSUS

ROBERT SANGANYI .....DEFENDANT

**JUDGMENT**

1. The plaintiff brought this suit against the defendant on 14<sup>th</sup> March 2013 seeking; a declaration that the plaintiff is the registered owner of all that parcel of land known as **LR No. Bassi/Bogetaorio II/4158** (hereinafter referred to as “**the suit property**”), a permanent injunction to restrain the defendant from re-entering; trespassing onto, cultivating, building onto, interfering with and/or in any other manner whatsoever dealing with the suit property and general damages for trespass. In his plaint dated 27<sup>th</sup> February 2013, the plaintiff averred that he is the registered proprietor of the suit property and that the suit property is a sub-division of original parcel of land known as **LR No. Bassi/Bogetaorio II/1060** (hereinafter referred to as “**Plot No. 1060**”). The plaintiff averred that when Plot No. 1060 was sub-divided, it gave rise to the suit property which was registered in the name of the plaintiff and **LR No. Bassi/Bogetaorio II/4157** (hereinafter referred to as “**Plot No. 4157**”). The plaintiff averred further that the plaintiff and one, Cremencia Onyiego and Gabriel Marimbu were the administrators of the estate of one, **Onyego Marimbu**, deceased (hereinafter referred to only as “**the deceased**”) and that, Plot No. 1060 was initially registered in the name of the deceased. Upon confirmation of the grant of letters of administration that was issued to the plaintiff and his co-administrators aforesaid, Plot No. 1060 was transferred to them by transmission. The plaintiff and his co-administrators thereafter sub-divided Plot No. 1060 and transferred the portion thereof comprised in the suit property to the plaintiff.
2. The plaintiff averred further that prior to the sub-division of Plot No. 1060 by the plaintiff and the other administrators of the estate of the deceased, the defendant without any lawful cause or basis entered Plot No. 1060 in the year 2008 and commenced cultivation on a portion thereof and that upon the sub-division of Plot No. 1060, the portion of Plot No. 1060 on which the defendant had trespassed on fell on the suit property. The plaintiff averred that he is now the lawful proprietor of the suit property and that the defendant has no right to continue occupying and using a portion thereof without the permission or consent of the plaintiff. The plaintiff averred further that as a result of the defendant’s acts of trespass on the suit property aforesaid, the plaintiff has been denied and/or deprived of the use and enjoyment of the portion thereof under the occupation of the defendant. It is on account of the foregoing that the plaintiff has sought the reliefs set out above as against the defendant.
3. The plaintiff’s claim was defended by the defendant. In his statement of defence dated 18<sup>th</sup> April 2013 the defendant denied the plaintiff’s claim in its entirety. The defendant claimed that he purchased the portion of the suit property in dispute from Cremencia Onyiego who was the wife and one of the administrators of the estate of the deceased. The defendant contended that he has lived on and occupied the disputed portion of the suit property peacefully over the years. When this suit came up for hearing on 7<sup>th</sup> April 2014 neither the defendant nor his advocate appeared in court. After satisfying myself that the defendant’s advocate was duly served with a hearing notice, I allowed the plaintiff’s advocate to proceed with the hearing. In his evidence, the plaintiff testified that the defendant is his neighbour. He stated that; the deceased owned Plot No. 1060 and that one, Cremencia Onyiego, Gabriel Marimbu and the plaintiff applied for a grant of letters of administration of the estate of the deceased. The plaintiff and his co-administrators were issued with a grant of letters of administration of the estate of the deceased which grant was subsequently

- confirmed. After the confirmation of the said grant, Plot No. 1060 was transferred to the names of the plaintiff and his said co-administrators who subsequently sub-divided the same into two (2) portions namely, the suit property and Plot No. 4157. The suit property was registered in the name of the plaintiff while Plot No. 4157 was registered in the name of the plaintiff's brother and co-administrator, Gabriel Onyiego Marimbu. The plaintiff was subsequently issued with a title deed for the suit property. The defendant trespassed in the suit property in the year 2008 and planted tea, trees and maize. The defendant's entry was without the plaintiff's permission. The plaintiff stated that prior to the defendant's entry and occupation of the suit property he was using the same for his subsistence and that he is now unable to use the property.
4. The plaintiff stated that the defendant is in occupation of the suit property to date and that the defendant's agents normally chases him away whenever he tries to access the suit property. The plaintiff produced as exhibits among others; a copy of certificate of confirmation of Grant of the estate of the deceased, Onyiego Marimbu, a certificate of official search dated 21<sup>st</sup> November 2012 in respect of Plot No. 1060, mutation form dated 14<sup>th</sup> December 2012 for the sub-division of Plot No. 1060, a copy of title deed for the suit property in the name of the plaintiff, a copy of certificate of official search dated 13<sup>th</sup> February 2013 in respect of the suit property and a copy of a demand letter dated 5<sup>th</sup> December 2009 addressed to the defendant by the plaintiff's advocates on record. The plaintiff did not call any witness.
  5. After the close of the plaintiff's case, the plaintiff's advocate made brief oral submissions. I have considered the pleadings on record, the evidence adduced and the submissions made by the plaintiff's advocate. The plaintiff's claim against the defendant is based on the tort of trespass. I am satisfied that the plaintiff has proved his claim against the defendant on a balance of probability. The plaintiff has proved that he is the registered proprietor of the suit property. The plaintiff has proved that the defendant entered the suit property and has remained in occupation of the suit property without the plaintiff's permission. The defendant has admitted that he is in occupation of the suit property. Although the defendant claims to have purchased the suit property from one, Cremencia Onyiego, the defendant did not tender any evidence in proof of his title over the suit property. The plaintiff's evidence regarding his proprietorship of the suit property has therefore not been controverted. It is therefore my finding that the plaintiff is the registered and lawful owner of the suit property. The defendant has not shown any lawful cause or justification for his entry and remainder in occupation of the suit property. In the circumstances, I am in agreement with the plaintiff that the defendant is a trespasser on the suit property. Due to the foregoing, I am satisfied that the plaintiff has proved his case against the defendant and that the plaintiff is entitled to the reliefs sought save for his claim for general damages in respect of which no proper basis was laid.
  6. In conclusion, I hereby enter judgment for the plaintiff against the defendant in terms of prayers (i) and (ii) of the plaint. The plaintiff shall have the costs of the suit.

**Delivered, dated and signed at Kisii this 23<sup>rd</sup> day of May 2014.**

**S. OKONG'O**

**JUDGE**

**In the presence of:-**

Mr. Ochwang'i     for the Plaintiff

N/A                     for the Defendant

Mr. Mobisa             Court Clerk

**S. OKONG'O**

**JUDGE**