



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

ENVIRONMENT AND LAND CIVIL CASE NO. 336 OF 2013

OBANO GONY.....PLAINTIFF

VERSUS

PETER ONGELE

OGONYI ONGELE

JANES ONGELE.....DEFENDANTS

JUDGMENT

1. The plaintiff brought this suit against the defendants on 1st August 2013 seeking; a permanent injunction to restrain the defendants severally and jointly from in any way howsoever interfering with the plaintiff's occupation and ownership of all that parcel of land known as LR No. Kabuoch/Kachieng/213 (hereinafter referred to as the "suit property"). In his plaint dated 31st July 2013, the plaintiff averred that he is the sole registered proprietor of the suit property which measures approximately 4.3 hectares on a first registration. The plaintiff averred further that on diverse dates the defendants jointly and severally without the consent and/or authority from the plaintiff unlawfully trespassed onto and occupied the suit property thereby depriving the plaintiff of peaceful occupation, enjoyment and use thereof.

2. The plaintiff averred that despite demand and notice of intention to sue having been served upon the defendants, the defendants have refused, failed, neglected and/or ignored to desist from the said acts of trespass thereby rendering the filing of this suit necessary. The defendants were served with summons to enter appearance but failed to do so within the prescribed time. On 25th September 2013, the plaintiff applied for interlocutory judgment against the defendants which judgment was entered on the same date. This matter was ultimately set down for formal proof on 15th May 2014. The plaintiff gave evidence and called no witness. In his evidence, the plaintiff testified that he is the owner of the suit property which he inherited from his father. The plaintiff testified that the defendants have entered into and are using the suit property.

3. The plaintiff testified that the defendants have no right over the suit property because they are not related to the plaintiff in any way. The plaintiff testified that the defendants are using the suit property for cattle grazing and sugar cane cultivation. The plaintiff testified that the defendants entered the suit property without his permission and as a result of their entry and occupation of the property, the plaintiff has been deprived of the use thereof. The plaintiff testified that each time he has sent his servants and/or

agents to the suit property they have been chased away by the defendants with *pangas*. It is on account of the foregoing that the plaintiff has sought an order of injunction against the defendants.

4. The plaintiff testified that the defendants are not residing on the suit property but are only carrying out cultivation and cattle grazing on the same. The plaintiff produced in evidence a copy of certificate of official search dated 5th May 2014 in respect of the suit property which shows that the same was registered in the name of the plaintiff on 15th November 2002. The plaintiff also produced in evidence a copy of the title deed in respect of the suit property in the name of the plaintiff. I have considered the plaintiff's claim as pleaded and the evidence tendered by the plaintiff at the trial of this suit. The plaintiff's claim against the defendant is based on the tort of trespass. Trespass is any unjustifiable intrusion in the land in the possession of another. The onus was upon the plaintiff to prove that the suit property is owned by the plaintiff and that the defendants have without any reasonable cause entered thereon.

5. The plaintiff tendered in evidence sufficient proof of the fact that the suit property is registered in the name of the plaintiff. The plaintiff also testified on oath that the defendants have entered into the suit property and are carrying out cultivation and cattle grazing thereon. The plaintiff's evidence has not been controverted by the defendants who chose not to defend this suit after being served with the court summons. In the absence of any explanation on the part of the defendants as to why they have entered and remained in occupation of the suit property, the only conclusion this court can arrive at is that the defendants' occupation of the suit property is unlawful and that the defendants are trespassers thereon.

6. The plaintiff having proved that the defendants are trespassers on the suit property, the plaintiff is entitled to the injunction sought to restrain the defendant from the said acts of trespass. Due to the foregoing I am satisfied that the plaintiff has proved his claim against the defendants to the required standard. I therefore enter judgment for the plaintiff against the defendants jointly and severally as prayed in paragraphs (a) and (b) of the plaint dated 31st July 2013.

Delivered, signed and dated at KISII this 18th day of July, 2014.

S. OKONG'O

JUDGE

In the presence of:-

Plaintiff present in person

N/A for the defendant

Mr. Mobisa Court Clerk

S. OKONG'O

JUDGE