



**REPUBLIC OF KENYA**

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

**ENVIRONMENT AND LAND CASE NO. 331 OF 2013**

**DR. DAVID FLEMING WANGILA ..... PLAINTIFF**

**VERSUS**

**COLLINS WANJALA ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff David Fleming Wanjala is the registered owner of L.R. Nos. E. Bukusu/W. Sangalo/2497 and 2498 as at 16<sup>th</sup> September 2013 (*hereinafter referred to as the suit property*). He has sued Collins Wanjala for a claim of permanent injunction barring him from occupying, trespassing, encroaching, and constructing on, ploughing and/or in anyway interfering with the plaintiff's peaceful occupation and enjoyment of the suit parcels. The plaintiff also prayed for costs of the suit and any other relief the honourable court deems just to grant.

2. The defendant was served with summons to enter appearance and plead on 25<sup>th</sup> January 2014. He was also served with an application brought by way of notice of motion, witnesses statements and documents on the same date as indicated in the affidavit of service drawn by Luke Ernest and filed in court on 30<sup>th</sup> January 2014. He did not enter appearance within the prescribed time. On 23<sup>rd</sup> January 2014, this court issued a directive that he be served for hearing of the said application on 30.1.14. He did not come to court and this court issued temporary orders of injunction restraining him from interfering with the plaintiff's user of the suit parcels pending determination of this suit. In spite of being served with the order, upto the time the matter was heard, he did not file any documents or appear in court.

3. The plaintiff thereafter set the suit down for formal proof for 16<sup>th</sup> July 2014. The process server said he served the defendant with the hearing notice on 23<sup>rd</sup> June 2014 within Bungoma court precincts while attending to a criminal case in the one of the subordinate courts. The defendant again did not respond to the notice served on him. The plaintiff thus adduced his evidence on 16<sup>th</sup> July 2014 which evidence was unopposed.

4. The plaintiff told court that he purchased the suit parcels from Getrude Nabangi Makokha on 3<sup>rd</sup> September 2013 for a consideration of Kenya shillings Eight hundred thousand (Kshs. 800,000/=) only which he paid in full. He produced a sale agreement as pex. 1 to confirm. He continued that he was given vacant possession and the title documents handed over to him by the seller. He produced copies of the titles Pex. 2a & 2b showing the parcels are currently registered in his name. The plaintiff took possession and there was no problem until on or about 31<sup>st</sup> October 2013 when the defendant trespassed on the suit parcels by putting up structures without his consent. The defendant's action he said has stalled his development activities. He reported the defendant to Bungoma Police station. The Police arrested him and he has been charged with the offence of trespass. He brought this claim seeking an order to permanently bar the defendant from interfering with his peaceful occupation and enjoyment of the suit parcels, L.R. E. Bukusu/W. Sangalo/2497 and 2498.

5. The plaintiff's evidence is supported by statements of five other witnesses filed alongside the pleadings. The key statement is one made by Getrude Nabangi Makokha who sold the pieces of land to him. Getrude stated that she is the previous owner of the suit parcels. She acquired the parcels of land as a gift from her father and has been utilizing them for a period of over 12 years to the exclusion of the defendant. She confirms selling the suit parcels to the plaintiff on 3<sup>rd</sup> September 2013. She says the defendant has no right to interfere with these parcels. She confirmed also that she is a witness in the criminal case where

the defendant has been charged with the offence of trespass.

6. I have considered the statement of the other four witnesses which have all confirmed the plaintiff purchased the two parcels of land and obtained vacant possession. Their evidence has also confirmed the interference made by the defendant hence necessitating the filing of this suit. The defendant is charged with a criminal case regarding his use of the suit parcels but he chose not to defend himself in this cause. It is also clear the plaintiff paid the purchase price in full. I have perused the sale agreement and copies of title deeds produced in evidence which bear the name of the plaintiff. The official search done on 30<sup>th</sup> August 2013 also shows there was no encumbrance registered on either of the titles by the defendant to express his interest if any on the suit titles. Under section 25 of the Land Registration Act, registration confers upon an owner/proprietor for rights and privileges free from all other interests and claims except as provided by the law. Section 26 provides that certificate of title is to be held as conclusive evidence of proprietorship. In this circumstance, the plaintiff being the holder of titles for both parcels is cleared as the proprietor. No evidence has been presented to this court to question the said titles.

7. Consequently based on the evidence on record and which is not opposed, I do find the plaintiff has established his case that he is entitled to use the suit parcels without any interference from the defendant or any persons claiming through him or otherwise. Forthwith I issue an order of permanent injunction against the defendant and all persons claiming through him restraining him from constructing on, ploughing, alienating, occupying, wasting fencing off or in any way interfering with L.R. E. Bukusu/W. Sangalo/2497 & 2498. The plaintiff is also awarded costs of this suit.

**Dated, Signed and Delivered** in Bungoma this 23<sup>rd</sup> day of Sept 2014.

**A. OMOLLO**

**JUDGE**