



COPY

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC NO. 197 OF 2013

1. GASPARY M. TSIYOSI

2. MLALA MWARUA

3. TSUMA KIDANGUPLAINTIFFS

-VERSUS-

KUTSUKA PARUDEFENDANTS

JUDGEMENT

[1] The plaintiffs claim against the defendant is for an order of permanent injunction restraining the defendant by himself and his agents, servants from trespassing, obstructing, occupying or any other manner interfering with the plaintiffs use of and occupation of their parcels of land in Ndavaya Group Ranch (KWALE NDAVAYA/1) and his eviction therefrom, costs and interest of the suit. The defendant was served with the plaint and he entered appearance on 18th September, 2013. he filed no other pleadings. A request for judgment was made on 27th December, 2013 and the judgment was entered by the Deputy Registrar on 22nd January, 2014. The matter came for formal proof before me on 29th May, 2014.

[2] The plaintiff Gaspary M. Tsiyosi who had been authorized by the other two plaintiffs to plead, act and appear for them on 30th August, 2013, relied on his witness statements annexed to the plaint. In that statement he averred that he is the owner of land with the title Kwale Ndavaya/1 Group Ranch. He averred that he purchased the land from the defendants father. That sometime on 30th April, 2013 the defendants trespassed on the plaintiffs land and the two adjacent parcels belonging to 2nd and 3rd plaintiffs. He prayed that the defendant be ordered by the court to vacate from the said parcels of land and pay damages for trespass and costs of the suit.

The averments of the plaintiffs have not been controverted by the defendants who was served and even entered appearance.

[3] The plaintiffs annexed photographs of the suit land showing the cultivated areas of the land with

planted foodcrops and the homestead of the defendant. I am convinced on the balance of probabilities that the defendant has entered the plaintiffs land and has erected a homestead and is cultivating food crops therein. I am also satisfied that he was served, entered appearance and failed to file his defence as a result judgment was entered against him.

[4] I do grant a permanent injunction against the defendant by himself, agents and servants from trespassing, obstructing, occupying or in any other manner interfering with the plaintiffs in the use and occupation of their parcels in Ndavaya Group Ranch, in Kwale Davaya/1 as prayed in the plaint.

[5] There was no proof of any damages before me and I will not order any damages. Each party shall bear their own costs.

Dated and delivered at Mombasa in open court this 18th day of September, 2014.

S. MUKUNYA

JUDGE

18.9.2014

In the presence of:

The 3rd defendant.