



**REPUBLIC OF KENYA**

**High Court at Bungoma**

**Civil Case 50 of 2012**

JAVAN ENGOKE MUSIEGA

[*suing thro'* Nicholas Angutsa Engoke ..... PLAINTIFF

VERSUS

NYONGESA SIFAGIO..... DEFENDANT

**JUDGEMENT**

The plaintiff filed a claim by way of an originating summons for orders;

- a). The plaintiff's claim to title by adverse possession over land parcel No. E. Bukusu/S. Kanduyi/1975 is merited and be granted.
- b). The registration of Nyongesa Sifagio as the proprietor of land parcel No. E. Bukusu/S. Kanduyi/1975 be cancelled and the register be altered in favor of the plaintiff Javan Engoke Musiega.
- c). The title deed for land parcel No. E. Bukusu/S. Kanduyi/1975 be issued to the plaintiff.
- d). Costs do abide the outcome.

The O.S was supported by affidavit. The defendant did not enter appearance. He was served through an advertisement placed in the Star Newspaper of Thursday November 29<sup>th</sup>, 2012. The matter proceeded to hearing on 26<sup>th</sup> February 2013.

PW1 Nicholas Angutsa Engoke testified on behalf of the plaintiff. He informed the court that he is son to the plaintiff. The plaintiff is old and ailing and has turned blind due to ill health.

His evidence to court is that the plaintiff purchased I acre portion of land from the defendant in 1970's. The original parcel from which the 1 acre was curved out from was E. Bukusu/S. Kanduyi/1443. His father was issued with a title deed on

16<sup>th</sup> March 1976 and he produced the original title deed as plaintiff exhibit 1. The plaintiff avers that the whole land measuring 2.03 ha was erroneously transferred to him. He produced sale agreement as exh. P.2 to show the plaintiff actually and lawfully claim 1 acre only. The plaintiff states that he had developed this portion with a house on it and has had it occupied for the past 44 years.

The original title no. E. Bukusu/S. Kanduyi/1443 was closed on sub-division on 28<sup>th</sup> February 2011. It produced parcel nos. 1974, 1975 – 2088. The green card was produced as Plaintiff exh. 3 Except for parcel No. E. Bukusu/S. Kanduyi/1975 which is in the defendant's name. The other parcels are in other people's names. When the plaintiff discovered the sub-division was undertaken, he lodged a complaint with the chief to also be able to get his title for the portion he occupies and which he purchased which according to the plaintiff is now E. Bukusu/S. Kanduyi/1975.

This evidence has not been challenged. The plaintiff's witness gave a good Chronology of events in support of their claim which this court finds believable.

The evidence is further corroborated with documents produced during the hearing. I have perused them and I am satisfied that the plaintiff has proved his case on a balance of probabilities. It can be conclusively held that the defendant retained title No. E. Bukusu/S. Kanduyi/1975 in his names in trust for the plaintiff. The sub-divided titles all have been registered into other names other than the defendant's name. I therefore grant the prayers as set out in the O.S. Costs are not awarded against the defendant as he did not enter appearance.

**JUDGMENT DATED, SIGNED, READ and DELIVERED** in open court this 26<sup>th</sup> day of March 2013.

**A.OMOLLO**

**JUDGE.**