

REPUBLIC OF KENYA

High Court at Bungoma

Environmental & Land Case 114 of 2012

WANJALA JORAM MUKONGOLO PLAINTIFF

VERSUS

WASWA DANIEL MUKONGOLO 1ST DEFENDANT

DELPHAS KIBAYA ADENYA CHIGABI 2ND DEFENDANT

JUDGMENT

The plaintiff came to this court vide his plaint dated 13th November 2012. In it he seeks eviction order and permanent injunction restraining the defendants from interfering with his land parcel nos. Bungoma/Kabuyefwe/687 & 688. He also filed documents which were copy of title deed and green card in support of his claim.

The defendants never entered appearance. The first defendant was served on 1st December 2012 at Ruani in Kabuyefwe. He was also served with a hearing notice on 29th January 2013. There is no record though of service upon the 2nd defendant.

From the documents filed, land parcel no. Bungoma/Kabuyefwe/687 was initially registered in the names of the 1st defendant as at 19th December 1995. On the same date, the green card shows it got transferred into the names of the 2nd defendant. The plaintiffs stated in evidence that his father is called Joram Wanyonyi. The green card shows he placed a caution on this title on 20th September 1999, claiming interest as a beneficiary.

He later removed the caution on 18th August 2009. The plaintiff got himself registered on 19th January 2012 through a vesting order on land case NO. 23 of 2006 at SRM's court Kimilili. The order was not among the list of documents of the plaintiff.

In respect of parcel no. 688, only the 1st defendant was registered as at 19th December 1995. The plaintiff then got himself registered quoted vesting order in land case no. 23 of 2006 at SRM's court Kimilili. He therefore he has title deeds to both the suit parcels.

The plaintiff's evidence was based on the facts that the defendants grabbed his land. The 1st defendant is his uncle who apparently sold one of the parcels to the 2nd defendant and retained one for himself. The plaintiff called a witness who confirmed the plaintiffs evidence that the land belongs to the plaintiff.

There was no evidence to contrary and therefore this court finds the plaintiff has proved his case on a balance of probabilities as it required by law. I hereby issue an eviction order against both defendants from land parcel no. Bungoma/Kabuyefwe/687 & 688 respectively. The order be served on them immediately.

They are given 60 days from the date of service of the order to move out of the land, in default of compliance with the order, the plaintiff be at liberty to evict them using lawful means. Subsequently after the eviction, the defendants themselves or through their agents are permanently restrained from

interfering with the plaintiff's peaceful use and enjoyment of the two parcels of land. The plaintiff bears the costs of this suit.

RULING DATED, SIGNED, READ and DELIVERED in open court this 14th day of March 2013.

A. OMOLLO

JUDGE