



REPUBLIC OF KENYA

High Court at Kitale

Civil Suit 41 of 2012

JOHN JONAM IBANDA 1ST PLAINTIFF

EZEKIEL KIRATHE BANDA 2ND PLAINTIFF

V

FANUEL WALEKHWA DEFENDANT

J U D G M E N T

The Plaintiffs John Jonam Ibanda and Ezekiel Kirathe Ibanda brought this suit against the Defendant Fanuel Walekhwa claiming a declaratory order that five acres of land comprised in land Parcel number 5335/24 Kinyikewi Estate currently in their possession belongs exclusively to them. The Plaintiffs also pray for an order of Permanent injunction restraining the Defendant, his agents, workers or anybody purporting to act for him or through him from trespassing the Plaintiffs five acres of land comprised in land parcel number 5335/24 Kinyikewi Estate. The Defendant who was duly served with Plaint and Summons neither entered appearance nor filed defence. The suit therefore proceeded ex-parte by way of formal proof. The two Plaintiffs are brothers. Their father who is now deceased was a shareholder of Kinyikewi Farm who are registered owners of Land Parcel No. 5335/24/Kinyikewi. This land has not been officially sub-divided but the shareholders were each shown land equivalent to their shareholding. In the present case, the father of the Plaintiffs had been allocated 5 acres. Before the Plaintiffs father died, he subdivided the 5 acres between his two sons. The entire parcel of Kinyikewi Farm was about 367 acres. Pw 1 John Jonam Ibanda produced a copy of the title [exhibit 1]. He testified that they have been residing on the land since 1964. Pw 1 produced a copy of a decree as exhibit 3. The decree shows that in 1998 the Plaintiffs' father and another brought a suit against 5 people. In a decree dated 06/03/1998, the High Court ordered the Defendant to give 5 acres out of LR. No. 5335/24 to the Plaintiffs. Pw 1 testified that the Defendant was one of the Defendant's in the other case. In Mach, 2012, the Defendant invaded the land and constructed structures on their land. He produced a photocopy of photographs taken showing structures being erected on the land as exhibit 2.

Pw 2 Ezekiel Kirathe Ibanda confirmed the position stated by Pw 1 and went ahead to produce minutes of a meeting held by shareholders of Kinyikewi Farm which shows that his late father was a

shareholder. These minutes were produced as exhibit 4.

I have gone through the pleadings as well as the evidence adduced by the Plaintiffs. The evidence by the Plaintiffs remains uncontroverted. The Plaintiffs have proved through evidence that their late father was a shareholder with Kinyikewi Farm who were owners of LR No. 5335/24. There has been no subdivision of the land but the members have been shown their respective portions. There is evidence that the Plaintiffs father sued the officials of the farm and the High Court ordered that he be given 5 acres out of the land owned by the farm. There is no evidence that the High Court decision was overturned. The Plaintiffs have also testified that before the demise of their late father, he had subdivided the land between themselves. Pw 1 testified that the current Defendant was also a Defendant in the High Court case between their father and others. It is therefore clear that the issue of 5 acres had been settled. The Defendant therefore has no claim over the land. I find that the Plaintiffs have proved their case on a balance of probabilities. Their claim succeeds and the same is allowed as per the prayers in the Plaint. The Plaintiffs shall have the costs of this suit.

Dated, signed and delivered in Open Court on this 24th day of April, 2013.

E. OBAGA

JUDGE

In the presence of 1st and 2nd Plaintiff.

CC: Joan.

E. OBAGA

JUDGE

24/04/2013