

REPUBLIC OF KENYA

High Court at Bungoma

Civil Case 139 of 2012

DAVID MUSIMISI WEKESAPLAINTIFF

VERSUS

WAFULA SIMIYU MATETE DEFENDANT

JUDGMENT

The plaintiff filed his suit on 10th October 2012 for a claim of ;

1. Permanent injunction directed at the defendant, his agents and/or servants howsoever called from entering into, remaining or in any other manner interfering with the plaintiffs rights of use and enjoyment of the property aforesaid.
2. Costs and interest.

There is filed an affidavit of service on 12th November 2012 giving a description how the defendant was served on 12th October 2012. The defendant was served again on 13th December 2012 with a hearing notice. He never filed any papers in opposition to the prayers sought by the plaintiffs. The case thus proceeded exparte on 11th April 2013.

The plaintiffs gave evidence in which he explained to court how he acquired the suit land. He purchased the land from the defendants father on 5th March 1997 and the agreement was adduced in writing. He produced the original as ex. P1. He thereafter got himself registered as owner of the sold parcel of land **Bokoli/Bokoli/1843** on 26th November 1999. He produced a copy of the title deed, certificate of official search and green card to confirm his ownership. He concluded by saying the defendant has his parcel of land but continues to live on the subject matter and destroys his crops while he is away if he plants any thus interfering with his right to use and enjoy the land.

The plaintiff has from the documents on record demonstrated that he is currently the owner of land parcel **Bokoli/Bokoli/1843** and is therefore entitled to all rights accruing to a registered owner as provided by law under section 24 of the Land Registration Act. He also stated in his evidence that he has tried to persuade the defendant to leave the land but which efforts have achieved no fruits. He sought this courts assistance to enable him enjoy his land which the court therefore grants to him.

His prayers are allowed in terms that the defendant is given sixty (60) days from the date the order/decree is served upon his to demolish his structure standing on land parcel **Bokoli/Bokoli/1843**. In default, the plaintiff to proceed and demolish the structure. Further on demolition of the house, the defendant either by himself, his agents or persons claiming through him be permanently restrained from interfering in any manner with the plaintiffs use of land **Bokoli/Bokoli/1843**. The plaintiff is also awarded costs of the suit.

JUDGMENT SIGNED, DELIVERED AND READ in open court this 13th day of MAY 2013.

**A. OMOLLO
JUDGE.**