



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CIVIL SUIT 74 OF 2011

MELTUS WANYAMA OBWETEPLAINTIFF

VERSUS

MAURICE WANDERA NABUYADEFENDANT

J U D G E M E N T

The Plaintiff Meltus Wanyama sues the defendant Maurice Wandera Nabuya for eviction orders fro land reference number Smia/Budongo/637 measuring 2.0 hectares. The defendant failed to enter appearance or file defence within the period given in the summons.

The plaintiff obtained ex parte judgement on 3.11.11 and proceeded to formally prove his case.

The plaintiffs evidence is that he and the late Isaac Omolo are the registered proprietors of the suit premises. A copy of the register shows that the two persons became registered owners on the 27th March 1980. The defendant encroached on the land in the year 2011 and fenced of the land or part thereof. The defendant is a step brother of the late Isaac Omolo and has by passed the closer relatives to grab the land.

The evidence of the plaintiff is uncontroverted that he Is the surviving proprietor of the suit premises entitled to half share of the land. The late Isaac Omolo held one share. He is survived by two sisters. The defendant is a step-brother and has encroached on the land without any colour of right. The defendant chose not to defend the suit. Whatever right he may have, the due process of the law must be followed.

I find that the plaintiff has proved his case against the defendant on the balance of probabilities. The court hereby enters judgement in the plaintiffs favour as prayed in the plaint in terms of prayers (a) and (c). No evidence was adduced for mesne profits and I therefore make no orders in respect of prayer (b). The defendant to meet the costs of the suit.

F.N. MUCHEMI

Judgement dated and delivered on the 28th day of May 2012 in the presence of the plaintiff and his counsel Mr. Situma.

L. KIMARU

J U D G E