



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**

**Civil Case 175 of 2000**

**DR. SAMSON AUMA.....PLAINTIFF**

**VERSUS**

**1. JARED SHIKULU**

**2. JOHN KASAMANI.....DEFENDANTS**

**JUDGEMENT**

The Plaintiff is the registered proprietor of plot Number **NORTH WANGA/MATUNGU/865**. He brought this suit against the defendants who are his neighbours seeking an order of injunction restraining them from encroaching on his land as well as an order that they do vacate from the encroached portions.

The matter proceeded ex-parte as the defendants were absent during the hearing despite having been served. The plaintiff's case is that the defendants are the proprietors of Plot Numbers **NORTH WANGA/MATUNGU/1135** and **1136**. Since 1992 they have kept on shifting the boundary and have erected Semi Permanent structures on his plot. He produced his title deed for his plot aforesaid.

The plaintiff further testified that the matter was reported before the Land Registrar at Kakamega in 1998 and on 2<sup>nd</sup> February 1999, the Land Registrar and Surveyors visited the three plots and fixed the boundary. The Survey found that indeed the defendants had encroached on the Plaintiff's land.

PW2, Andrew Akello used to work at the Kakamega Lands Office in 1999 as the Land Registrar. He was present when the boundary between the Plaintiff's and the defendant's land was being fixed on 2<sup>nd</sup> February, 1999. He went to the site with Surveyors, area Chief and Assistant Chief. The defendants were also present.

From the Plaintiff's evidence and that of PW2, it is established that the Plaintiff is the proprietor of **Plot No. NORTH WANGA/MATUNGU/865**. The Plaintiff has also established that he has had a longstanding boundary dispute with his neighbours who are the defendants. A boundary dispute report prepared by PW2 established that the defendants encroached on the plaintiff's land and some Semi Permanent structures belonging to the defendants stand on the Plaintiff's land.

I do find that the Plaintiff has proved his case against the defendants. The Plaintiff's case is granted as prayed in the Plaint. The defendants are hereby restrained from interfering with the Plaintiff's use of his Plot **NO. NORTH WANGA/MATUNGU/865**. The defendants to vacate the encroached portions of the suit property **WITHIN THIRTY (30) DAYS** from the date of delivery of the judgement failing which they be evicted from the property. I shall not grant any damages as the Plaintiff failed to adduced evidence on the claim. The defendant's shall pay the costs of this suit.

**SAID J. CHITEMBWE**

**J U D G E**

*Delivered, Dated, and Countersigned at Kakamega this 16<sup>th</sup> day of March, 2010*

**ISAAC LENAOLA**

**JUDGE**