

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CIVIL CASE NO. 180 OF 2003

SAMWEL MUGABE MENYURI PLAINTIFF

VERSUS

1. SELINA NYABOKE MAKORI

2. JOSEPH MISATI DEFENDANTS

JUDGMENT

Plaintiff SAMUEL MUGABE MENYURI brought this suit against both defendants seeking for an Order of Permanent injunction restraining them from trespassing onto the plaintiffs land NO.NORTH MUGIRANGO/BOISANGA/3128.

Both defendants filed their defence alleging that the plaintiff acquired the land by fraud. No particulars of the said fraud were set out. They asked court to either dismiss the suit or to have the land registered in their favour. Later the plaintiff made an application to have the said defence expunged from record. The application was allowed and on 26th October 2004 the defence was expunged. The hearing there went on ex parte.

The Plaintiff gave evidence and told the court that in 1994 he bought the land in dispute from the second defendant for shs.102,250/=. They entered into a sale agreement exh. P.1. He initially paid shs.65,000/=. He paid the balance which was acknowledged on 1st September 1994. The 2nd defendant acknowledged receipt of the same. The plaintiff then went into occupation of the land and started cultivating.

They appeared before the Land Control Board which gave court for transfer of the land. It was then transferred to the plaintiff. He produced title deed and Green Card which shows the land was transferred to the plaintiffs name from that of 2nd defendant on 14th September 1995.

Plaintiff went on to say that he started cultivating the land and built in the land. Later however the defendants demolished the houses.

The evidence on record is very clear. The plaintiff bought the land from the second defendant as shown in the sale agreement. He paid the agreed purchase price and the land was eventually transferred to his name. He has a title to that land. He told court that the two defendants have trespassed into the land and demolished his house. This is a proper case to grant a permanent injunction. Plaintiff has proved that he owns the land. He is therefore entitled to quiet enjoyment of the land. The defendants are denying him this by their acts of trespassed.

I therefore found the plaintiff has proved his case on a balance of probabilities and enter judgment for him against both defendants as prayed in the plaint.

Dated 27th May 2005

KABURU BAUNI

JUDGE

