



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. 348 OF 2014

FREDRICK OTIENO OBONYO & ANOTHER.....PLAINTIFFS

VERSUS

ANASTACIA ALOO ODONGO.....DEFENDANT

JUDGEMENT

Fredrick Otieno Obongo and Mildred Akinyi Olonge (hereinafter referred to as the plaintiffs) have come to court against Anastacia Aloo Odongo (hereinafter referred to as the defendant) claiming that at all material times to this suit the plaintiffs are the registered and beneficial owners of all that parcel of land known as SIGOMA/URANGA/1251. That the defendant is the registered and beneficial owner of all that parcel of land known as SIGOMA/URANGA/1253 which parcel is adjacent to the plaintiff's parcel of land.

That the defendant without any color of right and/or justification entered upon and/or trespassed the plaintiff's parcel of land the subject matter herein without the plaintiffs' authority and commenced ploughing and cultivation in addition to constructing a semi-permanent house on a portion of the plaintiffs' parcel of land.

The defendant's actions are in flagrant breach of clearly demarcated boundaries and/or beacons clearly separating the plaintiffs parcel of land being SIGOMA/URANGA/1251 and the defendant's parcel known as SIGOMA/URANGA/1253.

That further despite a survey commissioned by the defendant herself sometime in the month of June 2014 or thereabouts clearly distinguishing the extent of the boundaries between the parcel of land the subject matter herein and the defendant's parcel the defendant has blatantly persisted with her acts of trespass.

The plaintiffs claim therefore is for the eviction of the defendant from the portion the defendant is in occupation in all that parcel of land known as SIGOMA/URANGA/1251 and a permanent injunction restraining the defendant from further interfering with the suit parcel of land.

That despite several reminders and or notice of intention to sue the Defendant has to date failed, refused and or ignored to make good the Plaintiffs claim.

The Plaintiffs pray for the eviction of the defendant from the portion of land the defendant is currently occupying in that parcel of land known as SIGOMA/URANGA/1251 and a permanent injunction restraining the Defendant by themselves, their agents, employees or any other party deriving authority from them from trespassing, entering upon, cultivating, uprooting or in any other manner whatsoever interfering with the suit parcel known as SIGOMA/URANGA/1251. Costs of the suit.

The defendant neither entered appearance nor filed a defence. The Plaintiff gave evidence that he bought land parcel number SIGOMA/URANGA/1251 from Okumu Ayogi and the same was registered in his name and the name of his wife who is the 2nd Plaintiff. The Defendant encroached on the land and built some semi-permanent structures. Mildred Akinyi relied on her statement.

I have considered the evidence on record and do find that this is basically a boundary dispute that has been determined by the Land Registrar Siaya. This Court has looked at the land dispute report in respect of SIGOMA/URANGA/1251 and 1253 by the land Registrar Siaya dated 25/9/2018 and the Surveyor's report in respect of the suit parcels of land dated the same date and does find that the Land Registrar with the assistance of Land Sureyor Siaya determined the dispute.

Section 18 of the Land Registration Act 2012 provides that:

(1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed,

the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.

(2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.

(3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary: Provided that where all the boundaries are defined under section 19(3), the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act, (Cap. 299).

Ultimately, I do find that the court has no jurisdiction to delve into this action as it relates to a boundary dispute that has been determined. The Plaintiff can only appeal to this court. The suit is dismissed with no orders as to costs.

DATED AT KISUMU THIS 30th DAY OF APRIL, 2021

ANTONY OMBWAYO

JUDGE

This Judgement has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2019.

ANTONY OMBWAYO

JUDGE