



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

E.L.C NO. 29 OF 2016

RODGERS ODIKARA OKANGA.....PLAINTIFF

VERSUS

PATRICK KUOBA ADEYA.....1ST DEFENDANT

PETER KUOBA.....2ND DEFENDANT

EVERLYNE OLOKIO.....3RD DEFENDANT

SIMON OLOKIO.....4TH DEFENDANT

JUDGEMENT

1. The Plaintiff – **RODGERS ODIKARA OKANGA** – is the registered owner of Land parcel No.L.R BUKHAYO/KISOKO/2279 (hereafter “the suit land”) and is aggrieved by the defendants – **PATRICK KUOBA ADEYA, PETER KUOBA, EVERYLYNE OLOKIA** and **SIMON OLOKIO** – whom he accuses of trespassing and occupying it. He has requested and even demanded that the defendants leave the suit land but that has not worked. It therefore became necessary to file this suit. The suit was filed on 17th April, 2015 vide a plaint of even date. Later on, another plaint, said to be amended but with no amendments shown, was filed on 9th May, 2017. The plaint is dated 8th May, 2017 and asks for the following orders:

(a) Permanent injunction

(b) Mesne profits

(c) Costs of the suit

(d) Any other alternative relief which this court may deem fit to grant.

2. The defendants first filed a joint defence on 25th May, 2015 and denied having occupied the suit land. They pleaded, instead, that they are on Land parcel No. L.R BUKHAYO/KISOKO/2281, which they have occupied for over 15 years.

3. After the plaintiff filed his “amended” plaint, the defendants filed another joint amended defence, this time not only denying the plaintiff's allegations but alleging, inter alia, that the plaintiff acquired the suit land through fraud. The alleged fraud was said to consist in the fact that he obtained consent to transfer with one Benard Enyony, without the consent of 1st defendant; presenting himself before the area Land Control Board in pretense that he was with 1st defendant who is the beneficial owner of the suit land; forging the 1st defendant's signature; and obtaining the title by concealment of material facts.

4. The defendants further pleaded that they are in occupation of land parcel no. 2281, which neighbours the suit land. According to them, the problem is essentially a boundary dispute and should not even be before the court, the Land Registrar being the one mandated by law to handle it.

5. The court started hearing the matter on 15th February, 2017 and the plaintiff called two witnesses, himself (PW1) and the seller of the suit land to him (PW2). The plaintiff showed his title deed (PEX NO. 1) and said he bought the suit land from PW2. PW2 confirmed selling the suit land to plaintiff. He owned it, he testified, and sold it and went to live elsewhere. He confirmed too that the defendants are on the land.

6. Not all the defendants testified. Only third and fourth defendants gave evidence. And they did so as DW1 and DW2 respectively. Both said they live on land parcel No. 2281, not 2279. They are mother and son respectively. One Olokio Adeya is said to own parcel No. 2281. He is husband to DW1 and father to DW2. The plaintiff does not seem to have a problem with Olokio Adeya. He has not trespassed into or

occupied his land. It is DW1 and DW2 who have done so.

7. After hearing, the plaintiff filed submissions. The defendants did not. The plaintiff's submissions are essentially an overview of the whole case and a cry for help.

8. I have considered the case as filed, the evidence availed by both sides, and the plaintiff's submissions. From the evidence of PW1 and PW2 it seems clear to me that the defendants have occupied a portion of the suit land. The 1st and 2nd defendants are no longer on the suit land. The plaintiff testified that they left but he wasn't sure that their departure is permanent. The 1st and 2nd defendant didn't testify here. It is 3rd and 4th defendants who did. They insisted that they occupy parcel no. 2281 but their evidence is not convincing. It does not appear to me that the plaintiff is falsely accusing them. The two are on the land courtesy of one Olokio Adeya. But Olokio Adeya is not sued. He has not trespassed. It would appear that the 3rd and 4th defendants are on their own and they are trying to assert some perceived rights by forcibly occupying the land. This is wrong. Any such perceived rights can only be pursued through due process.

9. The defendants also alleged fraud on the part of the plaintiff and PW2. Their evidence in court however did not demonstrate any fraud at all. The plaintiff demonstrated well that the two have occupied part of his land. The other two defendants were on his land as well. No justification is demonstrated by the defendants at all for the prevailing state of affairs. It seems clear Olokio Adeya is not even the registered owner of parcel no. 2281. The registered owner was shown to be one Balongo Jacob.

10. The defendants also tried to make the case look like a boundary dispute. The fact of the matter is that it is not. They are not owners of any land that is adjacent to that of the plaintiff. How then can they have a boundary dispute with him? They are, when all is said and done, a source of continual annoyance to the plaintiff. To this court, the plaintiff was justified to feel aggrieved by them. I therefore find for the plaintiff and order as follows:

- a) The defendants voluntarily vacate the suit land within three (3) months after the delivery of the judgment failing which they should be forcefully evicted.
- b) A permanent injunction is hereby granted restraining the defendants, or anybody through them or at their behest, from trespassing into and/or occupying the suit land or any of its portions thereof.
- c) The defendants are condemned to pay costs for the suit and interests at court rates.

11. The court has not been persuaded that it should award any damages. No damages were adequately demonstrated or proved as payable. The attempt to prove damages was weak and/or inadequate.

Dated and signed at Kericho this 10th day of March, 2020.

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A. K. KANIARU

JUDGE

Dated, signed and delivered at Busia this 10th day of March, 2020.

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A. OMOLLO

JUDGE