



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA IN BUSIA

ENVIRONMENT AND LAND COURT

ELC NO. 61 OF 2015

JOSEPH OLOO AHENDA.....PLAINTIFF

= VERSUS =

BONFACE WABWIRE KASALA

DENIS WAYENI KASALA

JAMES OSABATI KASALA.....DEFENDANTS

J U D G M E N T

1. By a plaint dated 11/6/2015 and filed on the same date, the Plaintiff – **JOSEPH OLOO AHENDA** – instituted this suit against the Defendants – **BONFACE WABWIRE KASALA** (1st Defendant), **DENIS WAYENI KASALA** (2nd Defendant) and **JAMES OSABATI KASALA** (3rd Defendant) – claiming that they have trespassed onto his land parcel No. BUKHAYO/NASEWA/1841 intending to occupy it. This, the Plaintiff pleaded, is without justification and is also in breach of his rights. He fears that the Defendants' actions may create enmity or even cause a breach of peace.

2. The Plaintiff wants a permanent injunction to restrain the Defendants jointly and/or singularly from occupying, staying on, trespassing or dealing in any way adverse to his proprietorship right on land parcel No. BUKHAYO/NASEWA/1841. More specifically, the prayers sought are as follows:

Prayer (a): An order of permanent injunction to restrain the Defendants jointly and severally and all those who claim under them or through them from trespassing, entering or dealing with any other way adverse to the interests of the Plaintiff with land parcel No. BUKHAYO/NASEWA/1841.

Prayer (b): Costs of the suit.

3. Various affidavits of service show that the Defendants were not only served with pleadings but also with various hearing notices. Such affidavits include one dated 22/2/2016, another dated 19/9/2018, and still another dated 27/11/2018. The Defendants neither entered appearance nor filed defence. Consequently, the matter was heard on 27/11/2018 in absence of the Defendants. The Plaintiff gave evidence as PW1. He showed his title deed to the land (PEX No.1) and said, *inter alia* that his land is fenced all round. The Defendants are brothers and live on the neighbouring land owned by their father.

4. The Plaintiff hails from the area but is based in Nairobi where he works as an engineer. He said that whenever he sends people to work on his land, the Defendants have a habit of chasing them away. In one particular instance, the Plaintiff even reported the matter to police. The Defendants were arrested, charged, and convicted in Criminal Case No.886/2015 here in Busia. The Plaintiff's testimony in court was generally similar to his written statement dated 5/7/2018 and filed in court on 6/7/2018. The Plaintiff also adopted that statement as his evidence.

5. This is a simple and straightforward matter. And it is such because the Defendants have not responded to it and the Plaintiff demonstrated easily and convincingly that he is the owner of the land. He was able to show too that the defendants have in the past been charged in a court of law for an offence related to the same land. It is therefore plain that the Plaintiff's apprehensions are well founded. He deserves protection of the law.

6. My finding therefore is that the case is well proved on a balance of probabilities. I therefore grant the Plaintiff the two prayers - (prayers (a) and (b)) - sought in the plaint and stated at paragraph 2 of this judgment.

Dated, signed and delivered at Busia this 5th day of December, 2018.

A. K. KANIARU

JUDGE

In the Presence of:

Plaintiff: Absent

Defendant: Absent

Counsel for Plaintiff: Plaintiff

Counsel for Defendant: No Appearance

Court Assistant: Nelson Odame