



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

Environment And Land Case No. 255 Of 2013.

DAVID NASORUTA M MUHINDIPLAINTIFF/RESPONDENT

VERSUS.

ELIUD SANGURA WALLIKHE.....1ST DEFENDANT/AAPLICANT.

ALFRED WALIKHE SANGURA.....2ND DEFENDANT/APPLICANT.

JOHN WANYAMA WALIKHE..... 3RD DEFENDANT/APPLICANT.

JOHN MURUMBA WAFULA 4TH DEFENDANT/APPLICANT.

JOSEC ILAGA OJOKI 5TH DEFENDANT/APPLICANT.

ISAAC OTEBA MUCHI 6TH DEFENDANT/APPLICANT.

STEPHEN WEKUNDA 7TH DEFENDANT/APPLICANT.

PIUS KISENGE KILONGI 8TH DEFENDANT/APPLICANT.

CLEOPHAS JUMA OF WACHIA..... 9TH DEFENDANT/APPLICANT.

JUDGMENT.

[1] The plaintiff filed this suit against the defendant claiming for a permanent injunction restraining the defendants whether themselves and/or their servants from claiming and interfering with the plaintiffs peaceful and quiet possession of land parcel No. Kili/Sikhendu/212 measuring approximately 14.5 acres.

The plaintiff claims that he is the registered owner of the suit land. That the defendants without colour of right or express and/or implied permission has unlawfully interfered with the plaintiffs quiet enjoyment of the suit land. He avers that he has asked them to move out and they have refused to do so.

[2] The defendant filed their defences. Eliud Sangura Walikhe said in his defence that his father and the plaintiffs father were brothers. He said a portion of his fathers land was registered in the plaintiffs fathers land and that their fathers died before the dispute was determined. Mr. Josek Ilaga Ojeki alleged that he was a purchaser from a deceased person who also purchased from a deceased person while Jafred Walikhe Sangura 2nd defendant said that his father bought a portion from the brother of the plaintiff. The 7th defendant said that he bought I acre from the brother of the plaintiff in 1996. the 4th defendant said he

had occupied that land which was sold to him by his uncle Ben Wekhanya Balayo.

[3] The defendants further filed a general defence through J.S. Khakula & Co. advocates and put a general and unspecific counterclaim. The counter claim was replied to generally by the advocates for the plaintiff. During the hearing, the plaintiff adopted his statement and produced a copy of the title deed of land parcel in issue and closed his case. Of the defendants only Eliud Sangura Walikhe gave evidence. He said that he was a neighbour of the father of the plaintiff. He said that when the land was registered their land was registered in the name of Yohana 1963. that the said Yohana died before they resolved the issue.

[4] Having heard the case for the plaintiff and the evidence of the defendants there is only one thing for certain that the suit land is in the name of the plaintiff. There was absolutely no proof of the allegation by the 1st defendant. The other defendants did not come to court. They tendered no evidence.

[5] On the balance of probability, I allow the plaintiffs suit and dismiss the counter claim by the defendant with costs and order the eviction of the defendants from the plaintiffs land.

It is so ordered.

Judgment read in open court.

DATED and DELIVERED at BUNGOMA this 10th day of March 2017.

S. MUKUNYA

JUDGE

In the presence of:

Court Assistants Chemtai/Joy

Mr. Makokha for the Plaintiff

Mr. Musumba for Khakula for the defendants