



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
LAND AND ENVIRONMENT CASE NO. 177 OF 2013
(FORMERLY CMCC 218 OF 2012)

ALFRED WANJALA EKIDAPAPLAINTIFF

VERSUS

PATRICK SITATI WALUKHUCHI1ST DEFENDANT

DAVID MAEL BIKETI2ND DEFENDANT

DAUDI SITATI3RD DEFENDANT

MZEE SITATI4TH DEFENDANT

JUDGEMENT

[1] The plaintiff claim in this case is for a permanent injunction against the defendants to restrain them from interfering with his quiet use and enjoyment of parcel number North Malakisi/South Wamomo/260.

He avers that the defendants have trespassed into his land and are forcefully ploughing his land denying him user of his land.

The defendant filed a defence denying the allegations of the plaintiff. They also denied that the plaintiff has been residing on the suit parcel and that he has enjoyed an interrupted user of the land thereof.

[2] During the hearing hereof the plaintiff Mr. Alfred Wanjala Ekidapa gave evidence and told the court how he bought the land from the first defendant Patrick Sitali Walukhuchi on 3rd May 1992. He told the court that the land he purchased was 163 meters by 151 meters. That he purchased the land for Kshs.44,000/= He produced the agreement the parties wrote for that sale. He also produced all the subsequent agreement(s) that the parties made as plaintiffs exhibit 2 to exhibit 6. He said that after purchase of the land he planted coffee 400 plants and trees.

[3] That later the first defendant who had gone to Uganda came back and started uprooting the hedge boundary of the suit land. This prompted the plaintiff to report the matter to the chief Ruakhakha who wrote to the defendants on 28/5/2004. The letter was produced in evidence as P exh 7. There were subsequent letters written by the chief on 16/6/2004 warning the defendant not to interfere with the plaintiff's quiet enjoyment of the suit land. Another letter was written by the chief Ruakhakha. The plaintiff said that he had a case with the 1st defendant and his son at Malakisi, when the defendant's son had alleged that the plaintiff had taken one acre from the 1st defendant. The land disputes tribunal then ruled that the case belonged to the plaintiff. The tribunal proceedings were produced in court. The

plaintiff said that he has not lived in peace in his land. That is why he went to court to remove the defendants from his land. He produced a chief's letter to show that the defendants has built on his land as P exhibit 11.

[4] After the plaintiff finished giving his evidence and after he was cross examined by the defendants, the defendants said that they had no evidence to offer.

Having heard the plaintiff and having perused all the documents he produced, I am satisfied on the balance of probabilities that he has proved his case. His evidence was not contradicted by any of the defendants at all. I therefore allow his claim as prayed with costs. Those are the orders of the court.

Dated at Bungoma this 11th day of May 2016

S.MUKUNYA - JUDGE

Judgement read in open court in the presence of the parties and advocates

Mr. Watanga for the defendant

Mr. Anwar for Kraido for the plaintiff

S.MUKUNYA - JUDGE

11/5/2016