

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

LAND AND ENVIRONMENT CASE NO. 332 OF 2013

SIMIYU MUSANGA NDOMBI PLAINTIFF

VERSUS

MARCELLA NABUKUTO PATROBA.....Defendant

JUDGMENT

1. The plaintiff filed a plaint on 2nd December 2013 seeking the court to evict the defendant from his land parcel no. Kimilili/Kimilili/2533 and grant a permanent injunction to prevent the defendant from interfering with the said parcel. The plaintiff filed along with the plaint some exhibits in support of his case as required under Order 3 rule 2.

2. The defendant failed to enter appearance even after being served with summons and notice of hearing. This court then proceeded by way of formal proof after establishing from the record that the defendant was duly served.

3. The Plaintiff has urged this court to evict the defendant from the said parcel claiming that he is the real proprietor of the land. The plaintiff told court that he is the sole proprietor of all that parcel known as Kimilili/Kimilili/2533 having bought it from one John Wafula Patroba who happens to be the defendant's brother. That after the death of the seller the defendant claimed that the land belonged to him. That he put up structures and started selling firewood. That the defendant reported the matter to the D.O. who summoned the two and demanded for the production of documents. That he showed his but the defendant did not have any. It was then the D.O asked the plaintiff to come to court and seek for the above orders.

4. I have carefully examined the plaintiff's documents and it clearly indicates that he is the sole proprietor. There are no encumbrances registered upon the said title deed attached. The defendant was duly served and he did not at any instance come to court to defend himself. Court is left to assume and rightly so from the examination of the documents that the plaintiff is the real owner of the said parcel.

5. Section 24 of the Land Registration Act confers absolute ownership of title on the person registered as the proprietor. Section 26 goes ahead to state that a certificate of title is conclusive evidence of proprietorship and can only be challenged on grounds of fraud or misrepresentation. From the documents produced by the plaintiff it shows that he is the owner of land parcel number Kimilili/Kimilili/2533 and as such he is the legal proprietor of that parcel. No evidence has been tendered to the contrary.

6. In the premises I find the plaintiff has proved his case on a balance of probabilities and order the defendant to stop forthwith from dealing in whichever manner with land parcel no. Kimilili/Kimilili/2533. His presence in that parcel is hereby rendered unlawful and he should vacate the land within 30 days from the date of this judgment. In default, orders of eviction be and are hereby issued to the plaintiff.

7. Since the suit is not defended no costs are awarded.

Dated, signed and delivered in Bungoma this 17th day of July 2014.

A. OMOLLO

JUDGE