



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

LAND AND ENVIRONMENT NO.117 OF 2012

WILLIAM ORARO ONGANY.....PLAINTIFF

VERSUS

LEONARD OBUNGO AYIEKO.....DEFENDANT

FINAL JUDGMENT

1. The plaintiff – **WILLIAM ORARO ONGANY** – filed this suit here on 3/12/2012 vide a plaint dated 22/10/2012. The suit is against the defendant **LEONARD OBUNGO AYIEKO** – who is said to have trespassed into land parcel No. **KISUMU/KOGONY/2754** belonging to the plaintiff.
2. The alleged trespass forms the basis of this suit. The defendant is said to have trespassed into the land and put up three (3) semi-permanent structures. He has also fenced and constructed a toilet.
3. The plaintiff is praying for a permanent injunction to restrain the defendant from trespassing, encroaching, alienating or dealing in any way with the plaintiff's parcel No. **KISUMU/KOGONY/2754** (Suit land hereafter). He also craves for an order compelling the defendant to vacate the suit land and demolish all the structures constructed thereon. Costs of the suit are also asked for.
4. It appears clear that the defendant was served. He however did not bother to enter appearance and/or file defence. The fact of service is vouched for vide an affidavit of service filed here on 25/4/2013 sworn by Moses Rumba Ojwang and dated 9/1/2013. The affidavit of service shows there was first unsuccessful attempt at service on 24/12/2012 but the second attempt, this time on 29/12/2012, was successful. The defendant was evidently served at his workshop at or near Eldoret Bus stage after being pointed out by one of his colleagues.
5. Despite service, the defendant didn't take any action. This necessitated a request for entry of judgment against him and such judgment was entered on 26/4/2013, a day after a written request was filed.
6. The matter then came for formal proof on 1/7/2014. The plaintiff mainly reiterated the averments in the plaint. In addition, the following exhibits were availed:-

- Copy of green card (plf Ex No.2)
- Copy of Search showing plaintiff as owner of the suit land (plf Ex No.3)
- Copy of map from Land office showing the suit land (Plt EX No.4).

7. The suit is uncontroverted. The plaintiff has demonstrated well that he owns the suit land. The input from the defence is lacking. There is therefore nothing standing in the way of what the plaintiff is seeking.

8. I therefore make a finding that the plaintiff is a trespasser into the suit land and his actions of putting up semi permanent structures, constructing a toilet and fencing are all illegal. The plaintiff therefore gets an order injuncting the defendant from trespassing, encroaching or in any way dealing or interfering with the suit land. The defendant is ordered also to vacate the suit land and demolish the structures he has put up on it. The plaintiff should first give a notice of 3 months to the defendant to demolish the structures. If the defendant fails to do so within that period, the plaintiff is at liberty to do the demolition. The plaintiff also gets costs of this suit. In short, the plaintiff gets prayers (a) (b) and (c) as spelt out in the plaint.

A.K. KANIARU – JUDGE

7/10/2014

7/10/2014

A.K. Kaniaru – Judge

Dianga G. - court clerk

No party present

Interpretation: English/Kiswahili

COURT: Notice to deliver judgment herein was sent on 18/9/2014. Final judgment is therefore read and delivered in open court.

Right of Appeal – 30 days.

A.K. KANIARU – JUDGE

7/10/2014