

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

ENVIRONMENT AND LAND CASE NO. 49 OF 2012

EMILY NASIMIYU BUCHUNJU PLAINTIFF

VERSUS

DICKSON SIMIYU.....DEFENDANT

JUDGMENT

Then plaintiff has brought his claim against the defendant Dickson Simiyu for;

“An injunction order restraining the defendant whether by himself or his agents and/or servants from tilling, working or howsoever encroaching on the plaintiff's parcel of land.”

She also prayed for costs of the suit and any other relief the court deems just to grant.

The defendant was served with summons to enter appearance, plaint and documents on 14.9.2012 as evidenced by affidavit of service on record. He never entered appearance thus the suit proceeded unopposed.

On 29th May 2013 the plaintiff testified how she acquired this land. She got this land as a share from her father's land. She had earlier presented her case before the Land Disputes Tribunal as her step brothers did not want her to inherit a share of her father's land. The plaintiff produced the proceedings of the tribunal as P.Ex. 3. Thereafter her father signed for her transfers documents for which she got title comprised in **L.R. Ndivisi/Muchi/7259**. The surveyor also came to the land and planted boundaries. The defendant planted sugar cane in 2011 alongside other crops.

The plaintiff sent a demand letter produced as exp. 4 which elicited no response from the defendant. She prayed for a permanent injunction to stop the defendant from using her land.

The plaintiff called Albert Nyongesa Munyasi as PW2. PW2 is her uncle. He confirmed the plaintiff's evidence and added that the defendant is not related to the plaintiff in any way.

Mr. Murunga advocate for the plaintiff asked the court to close the defence case since no evidence was adduced which this court did. Thereafter he filed written submissions in support of his client's case. He submitted that the plaintiff has proved her case within the required standards. He relied on the Court of Appeal decision of **Michael Githinji Kimotho Vs. Nicholas Muratha Mugo NBI. Civil Appeal No. 53 of 1995** annexed to his submissions.

I have looked at the evidence on record and the exhibits annexed. During the hearing before The Tribunal, the plaintiff's father testified that he had no objection to the plaintiff getting ¼ acre from **L.R. Ndivisi/Muchi/6382**. Neither did her step brothers object to the same. This confirms her evidence that her father signed documents transferring land to her.

In the cited case *supra*, the appeal was dismissed because the court found the Appellant being a squatter, he had no locus standi to challenge the title of the Respondent nor right to deny him the protected rights of a proprietor under Sec. 28 of the Registered Land Act. Similarly, the plaintiff herein was given land by her father. She holds a title as registered proprietor and is thus entitled to quiet possession and user as provided in Sec. 24 & 25 of the Land Registration Act.

In view of the fact that the evidence of the plaintiff is not controverted, I hold that her rights to use **L.R. Ndivisi/Muchi/7259** should not be infringed by the defendant or any other person without her consent and authority. I am satisfied that she has proved her case on a balance of probability. I accordingly allow her claim as presented. The plaintiff testified that there was cane planted on this land. If the defendant has developed the cane – most likely now in ratoon stage, I allow him time within which to harvest the said cane only which should not exceed a period of 6 months. If there is no cane under development, he should stop any fresh development/cultivation of the land forthwith. I make no order on costs.

JUDGMENT DATED AND DELIVERED this 8th day of October 2013.

A. OMOLLO

JUDGE.