

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL CASE NO. 131 OF 2012

MOSES WANYAMA MASINDE PLAINTIFF

VERSUS

STEPHEN BWONGO WAFULA1ST DEFENDANT

GABRIEL NYONGESA WAFULA 2ND DEFENDANT

JUDGMENT

The plaintiff filed the suit against the two defendants seeking;

- (a). Eviction from land parcel No. BOKOLI/MUKUYUNI/1653.
- (b). Costs
- (c). Interest thereon on (a) & (b) at court rates.
- (d). Any other relief the court may deem fit to grant.

The plaintiff filed affidavit of service on 29th October 2012. The process server deponed that the defendants were duly served with summons to enter appearance, pleadings, statements and documents on 26th September 2012. The plaintiff subsequently requested for Interlocutory judgment on the same date (29.10.2012) although the same was not endorsed as an order of the court.

The plaintiff thereafter set the suit down for hearing. On 20th March 2013, a day before the first hearing, Mr. Ateya advocate filed a memorandum of appearance for both defendants. On 21st March 2013, Mr. Juma advocate holding his brief sought an adjournment to allow the defendants to file their papers. The court granted the adjournment and hearing set for 9th May 2013. The defendants were to file their papers before then.

On 9th May 2013, neither the defendants nor their advocates appeared. The suit therefore proceeded ex parte. The plaintiff (*hereinafter referred to as PW1*) testified. He told court that he purchased 3 acres of land from the father of the defendants which land was to be carved out of L.R. Bokoli/Mukuyuni/1380. In the year 2010, the defendants' father subdivided the land and transferred to him his new portion now comprised in **L.R. No. Bokoli/Mukuyuni/1633**. He produced a sale agreement, official search and copy of title deed to prove this land belongs to him.

PW1 further said that the defendants' forcibly entered the land in January 2011 and in paragraph 5 of the pleadings he avers, ***“the defendants have unlawfully encroached on the plaintiff's land parcel Bokoli/Mukuyuni/1633 and have erected houses besides ploughing and planting in it food crops to the exclusion of the plaintiff.”*** This evidence has not been challenged given the defendants did not participate in these proceedings. In the absence of contrary evidence, I have no reason to deny the plaintiff an opportunity to enjoy the use of his land L.R. No. Bokoli/Mukuyuni/1633 as protected by the law.

In the end, the plaintiff's suit therefore succeeds. The defendants are directed to vacate the suit property

within 60 days from the date of service of this judgment upon them. In default, the plaintiff is at liberty to use lawful means to have the defendants evicted from the suit land. The plaintiff is not awarded costs as the suit proceeded unopposed.

JUDGMENT DATED and DELIVERED this **8th** day of **October** 2013.

A. OMOLLO

JUDGE.