

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

ELC. CASE NO. 31 OF 2017.

DIPHAS WAFULA WANYONYI.....PLAINTIFF

VERSUS.

RICHARD KITUYI.....DEFENDANT

JUDGMENT.

[1] The Plaintiff filed this suit and stated that he is the registered owner of Bokoli/Chwele/2018 located in Chwele in Bungoma County comprising of 2½ acres. That the defendant is his neighbour and that he has unlawfully occupied part of his land approximately one acre. That despite his attempts to have the defendant move and vacate out of the same, the defendant has completely refused to do so.

[2] The defendant was duly served with copies of the Plaint together with the summons to enter appearance on 8/3/2017. He never filed any appearance or defence whereupon the plaintiff filed a request of Judgment on 30/3/2017 and paid for it on 31/3/2017. The Deputy Registrar of this court ordered that the case be fixed for formal proof under order 10 rule 9 of the Civil Procedure Rules.

[3] The case came up for formal proof on 10/10/2017. The Plaintiff proved his case. He produced the documents to wit that, his statement dated 28/2/2017, a copy of his title deed for Bokoli/Chwele/2028 dated 18th October, 2013. The Mutations dated 07/12/2000 and a search certificate dated 27/2/2017.

[4] I am satisfied that the plaintiff is the owner of the suit land. I am equally satisfied that the defendant has encroached on the same to the extent of one acre on balance of probabilities.

[5] I do order that the defendant to move out and vacate the suit land forthwith. Failing which the court broker of this court will evict him out with the assistant of the O.C.S. Chwele Police Station at the defendants cost. The plaintiff shall have the costs of this suit.

Judgment read in Open Court in the presence of the parties.

Dated at Bungoma this 10th day of January, 2018.

S. MUKUNYA

JUDGE

In the presence of:

Chemutai - Court Assistant

Plaintiff - Present

Defendant - Present