



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

IN BUSIA

ENVIRONMENT AND LAND COURT

ELC NO. 59 OF 2017

JOHN NDEDA.....PLAINTIFF

VERSUS

DAVID MUKANGULA SAIZI.....DEFENDANT

J U D G E M E N T

1. By a plaint initially filed here on 20/3/2017 and dated the same, the Plaintiff - **JOHN NDEDA** - complained that the Defendant – **DAVID SAIZI** – had annexed a portion of his land parcel No. **BUKHAYO/BUGENGI/2084** (“suit land” hereafter) and fenced it. The Defendant was said to own a neighbouring parcel of land – L.R. No. BUKHAYO/BUGENGI/12077. The portion annexed by the Defendant was said to have been made part of L.R. No. BUKHAYO/BUGENGI/12077.

2. The plaint was amended afterwards and dated 8/3/2018. It was then filed on 9/3/2018. The substance of the plaint remained the same except that the amended plaint clearly shows the Plaintiff as the administrator of the estate of his late father – **ELISEYO N. MUBWEKA**.

3. The Plaintiff pleaded that when the Defendant encroached on his land, he reported to the area County Land Registrar who visited the site and pointed out to the parties the correct boundary. Even then however, the Defendant persisted in his illegal actions thus rendering the filing of this suit necessary.

4. The Plaintiff is seeking the following orders:

(1) That the Defendant be evicted from the suit and.

(2) That the Defendant, by himself, his agents, workers, personal representatives and/or assignees be restrained from entering, trespassing or in any other way interfering with the Plaintiff’s quiet enjoyment of the suit land.

(3) Costs of the suit.

(4) Any other alternative relief this court may deem fit to grant.

5. When the suit was initially filed, records show that the Defendant was served. An affidavit of service by one PETER NANJALA ODWORI dated 24/4/2017 vouches for such service. The Defendant however never entered appearance and/or never filed defence. It therefore became necessary to proceed with the suit without the Defendant’s input.

6. The court heard the matter on 14/3/2018. The Plaintiff testified as PW1. He reiterated the contents of his pleadings and additionally availed the following exhibits:

(i) **PEX No. 1(a) and (b) – Letters of Administration and Confirmed Grant showing the capacity in which the Plaintiff has sued.**

(ii) **Green Card for the suit land showing the Plaintiff as the current owner.**

(iii) **PEX No. 3 – Copy of Search Certificate vouching for the Plaintiff’s ownership of the suit land.**

7. The Plaintiff also called one DAVID MAGENI IBU (PW2) who testified that he is a neighbour to both parties. He said that the Defendant had annexed a portion of the suit land and destroyed the boundary that existed.

8. After the conclusion of hearing, written submissions were filed. Not much was said in the submissions. There was simply a short narrative and the court was then asked to grant the prayers sought.

9. I have considered the suit as filed, the evidence availed, and the submissions. It is well demonstrated that the Plaintiff has annexed a portion of the suit land. It was demonstrated too that an attempt was made to find a solution before coming to court. The Defendant however is said to have pooh-poohed the attempt and remained adamant. That is why the Plaintiff came to court.

10. This is a simple and straight forward matter. Nothing really stands in the way of granting the orders sought. The Plaintiff's suit is well proved on a balance of probability and he is granted prayers (i), (ii) and (iii) in the plaint. The prayer of eviction however should be carried out after giving the Defendant a notice of at least three (3) months to vacate the portion he has occupied. He should remove all what he has from the portion of his own volition, failing which he has to be forcefully evicted.

Dated, signed and delivered at Busia this 20th day of June , 2018.

A. K. KANIARU

JUDGE

In the Presence of:

Plaintiff:

Defendant:

Counsel of Plaintiff.....

Counsel of Defendant.....