



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 11 OF 2015

SAMUEL KIBOI SIMATWA.....PLAINTIFF

VERSUS

PETER MWANIKI NJUGUNA.....DEFENDANT

J U D G E M E N T

The plaintiff filed this suit on 5/2/2015 seeking the following orders:-

- a. **An order of eviction of the defendant, his agents, servants, employees and/or anyone claiming under him from the 8 meters or so part of the plaintiffs land Plot No. Trans-Nzoia/Zea/377.**
- b. **Costs of the suit.**
- c. **Any other relief this Honourable Court may deem fit and just to grant.**

The plaintiff pleaded that the defendant encroached on his land by about **8 metres**, and he has asked him to correct the anomaly in vain. He avers that the Trans-Nzoia Land Registrar, through the help of Surveyor and in the presence of both parties confirmed the encroachment by the defendant, and that the defendant is now a trespasser into the plaintiff's land and he should be ordered to move out failure to which he should be evicted.

The defendant filed a memorandum of appearance in person on 20/2/2015 and his defence on 9/3/2015. He denied the encroachment and averred that he bought his plot in the year 2003 with the boundaries as they are to date and that he was issued with a title deed in the year 2015. He further avers that the plaintiff bought his plot 6 years later in the year 2009 from one of the defendant's neighbours and he found the boundaries as they are and none of the neighbours had any pending dispute by then.

In his witness statement the defendant stated that he was present on 4/7/2014 when the Registrar and the Surveyor came to address the disputed boundaries and that the plaintiff land was measured and found to be 5 acres just as the title deed indicates.

However, the Land Registrar's Report produced in court as an exhibit, which is dated 17/7/2014, confirms the said encroachment complained of by the plaintiff.

The defendant did not attend court to urge the possible merits of his defence. The Report of the County Surveyor dated 14/7/2014 also confirms the said encroachment.

I find that the plaintiff has proved his case on a balance of probabilities. I therefore grant **prayer (a)** of the plaint dated 30th January, 2015. Each party shall bear its own costs.

Dated, signed and delivered at Kitale on this **3rd** day of **April, 2017**.

MWANGI NJOROGE

JUDGE

In the presence of:

N/A for the plaintiff who knew of the date

N/A for the defendant who never attended the hearing.

MWANGI NJOROGE

JUDGE

3/4/2017