



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA IN BUSIA
LAND & ENVIRONMENTAL DIVISION
ELC. NO. 137 OF 2015

BENARD AWIRE EGESA PLAINTIFF

VERSUS

AGNES AKUMU WANDERA DEFENDANT

JUDGEMENT

1. By a plaint dated 28/10/2015 and filed here on 2/12/2015 the Plaintiff - **BENARD AWIRE EGESA** - complains that the Defendant - **AGNES AKUMU WANDERA** - with the help of her children, has trespassed into part of his land and erected a house. She continues to occupy and use the land. And the land is L.R. S.TESO/ANGOROMO/3971. The Plaintiff wants an eviction order against the Defendant, her family, servants or any other person claiming on her behalf. He also wants costs and restraining order.

2. From the pleadings, it is clear that the Defendant is the wife of the Plaintiff's late brother - CYPRIANO WANDERA EGESA – who owned the neighbouring land parcel LR S.TESO/ANGOROMO/3970. A visit to the land by the surveyor in 2015 established that there was indeed the encroachment complained of. The Defendant is said to have failed or refused to vacate the encroached upon portion.

3. Records show that the Defendant was served on 27/4/2016 by one JOSEPH ORATA KWEYU at her home in Angoromo village at or around 3 pm. Kweyu was directed to the Defendant by the Plaintiff. In spite of service however, the Defendant did not enter appearance and no defence was filed. This impelled the Plaintiff to request for interlocutory judgement and such judgement was entered on 25/5/2016.

4. The matter thereafter came for formal proof. The Plaintiff reiterated what his pleading contained and he also availed the following exhibits:

- (i) Title for Land parcel No.3971 (PEX No.1)
- (ii) Search copy for ownership of land Parcel No. 3071 (PEX No.2)
- (iii) Search copy showing ownership of parcel No. 3970 (PEX No.3)

5. The surveyor was also called to testify and he did so as PW2. He told the court about his site visit and he produced the written report as PEX No.4.

6. The Plaintiff filed written submissions. The submissions were actually a summation of both pleadings

and evidence and included a rendition of the applicable law.

7. This is an uncontested matter. On balance, it is well shown that the Defendant has encroached on a portion of the Plaintiff's land. She has put up a house there and is using the land. The Plaintiff has demonstrated that he is the registered owner of the land. He also involved the relevant land office to prove encroachment. There is nothing standing in the way of granting the prayers sought.

8. Accordingly, the Plaintiff is granted an eviction order as prayed. The eviction should be orderly. It should begin by giving the Defendant a three (3) months' notice to leave the land. If she or the others on the land fail to leave, forceful eviction should follow. The Defendant is also granted a restraining order which will start to apply after eviction. The order is meant to prevent the Defendant or others through her from coming back to the land or using it in any manner. The Defendant also gets costs of the suit.

Dated, signed and delivered at Busia this 19th day of July, 2017.

A. K. KANIARU

JUDGE

In the Presence of:

Plaintiff:

Defendant: