



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ELC CASE NO.577 OF 2015**  
**[FORMERLY BUSIA H.C.C NO.51 OF 2012]**  
**GEOFFREY MURABULA OGONDA.....PLAINTIFF**

**VERSUS**

**OWINO SEWE.....DEFENDANT**

**JUDGMENT**

1. **Geoffrey Murabula Ogondo**, the Plaintiff, vide the plaint dated 25<sup>th</sup> July 2011, seeks for eviction of **Owino Sewa**, the Defendant, and injunction order restraining him from trespassing, encroaching or interfering with his use of land parcel **North Ugenya/Sega/350**. The Plaintiff also prays for lifting or inhibitions on the said land and costs.

2. The Plaintiff avers that he acquired the said land from Felix Okwom and was issued with the title deed on the 10<sup>th</sup> July 2009. That the Defendant trespassed on a portion of the said land in 2009 and caused a restriction to be registered on the title and hence this suit.

3. The claim is denied by the Defendant vide his statement of defence dated 29<sup>th</sup> October 2011. He avers that the Plaintiff obtained registration with the land fraudulently. That the Defendant and his family have lived on the land for over 30 years.

4. Mr. Fwaya and Mr. Omayo advocates, appeared for the Plaintiff and Defendant respectively.

5. The Plaintiff testified as PW1 and called Felix Okwom as a witness and he testified as PW2. The Defendant testified as DW1 and called Habil Oyugi and Thomas Odero Omollo as witnesses and they testified as DW2 and DW3.

6. The counsel for the Plaintiff and Defendant filed written submissions dated 13<sup>th</sup> March 2017 and 29<sup>th</sup> May 2017 respectively.

7. The following are the issues for the determination by the court;

- a. Whether the Plaintiff is the legally registered proprietor of the suit land **North Ugenya/Sega/350**.
- b. Whether the Defendant has any legally recognized interest on the suit land.
- c. Whether the Defendant has trespassed onto any portion of the said land and if so, whether he should be evicted and restrained.

d. Who pays the costs.

8. The court has carefully considered the evidence by both parties, submissions by counsel, pleadings filed and come to the following conclusions;

a. That the Plaintiff has offered both oral and documentary evidence that confirms that he got registered as proprietor of the suit land and was issued with a tile deed on 10<sup>th</sup> July 2009.

b. That the Plaintiff had bought the land from PW2 (Felix Okwom) who had become the registered proprietor on adjudication on the 11<sup>th</sup> September 1976 in the name of Mungayo Okuom, and subsequently changed the name to Felix Mungayo Okuom on the 14<sup>th</sup> August 2006.

c. That the registration of the suit land with PW2, who was the first registered proprietor, had not been challenged by the time he transferred ownership to the Plaintiff and there is no evidence adduced in this proceedings to show that he did not have a good title to pass to the Plaintiff.

d. That it is doubtful as to whether the Defendant's houses are all or partly on the suit land or parcel **North Ugenya/Sega/351** which neighbours it. That the only way to confirm whether indeed any of the Defendant's houses are on the suit land is by the Land Registrar and Surveyor visiting the suit property and confirming its boundaries on the ground.

e. That as the Defendant had not challenged the title of PW2 to the suit land before he transferred ownership to the Plaintiff, and further as the Defendant has not established any legal claim over the land, the court finds that he has no right to remain on or use the land.

9. That flowing from the foregoing the court finds that the Plaintiff has established his case against the Defendant on a balance of probabilities and orders as follows;

a. That the County Land registrar and Surveyor do visit land parcel North Ugenya/Sega/350, establish its ground boundaries within the next 60 (sixty) days and file a report with the court specifying whether any of the Defendant's houses and farming activities are on that land.

b. That the Defendant do remove any of his houses or crops found to be on land parcel **North Ugenya/Sega/350** in 30 (thirty) days after the exercise in (a) above and in default he be forcefully evicted.

c. That an order of permanent injunction is hereby issued restraining the Defendant by himself and or those claiming under him from interfering with the Plaintiff's use of the suit land after he gives vacant possession or is evicted.

d. The Defendant do pay costs of the suit.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 8<sup>TH</sup> DAY OF NOVEMBER 2017**

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr Otieno Njoga for Omayya for Defendant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**8/11/2017**

8/11/2017

S.M. Kibunja Judge

Oyugi court assistant

Mr Otieno Njoga for Omayya for Defendant

Court: Judgment dated and delivered in open court in presence of Mr. Otieno Njoga for Omayya for the Defendant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**8/11/2017**