



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 83 OF 2014

1. PATRICK WAKOLI SICHANGIPLAINTIFFS

2. FRED MZEE NYUONGESA PLAINTIFFS

VERSUS

1. PATRICK MAKOKHA BUNYOLI.....DEFENDANTS

2. JOSEPH BARASADEFENDANTS

3. BENARD MUKHWANA.....DEFENDANTS

JUDGEMENT

1. The plaintiffs are the registered owners of LR. NO. Waitaluk/Kapkoi Block 12 (Chamgei)/220 which is 1.1 hectares (suitland). The defendants are from one family which own plot No. Waitaluk/Kapkoi Block 12 (Chamgei)173. The defendants family had sold small portions of land to various persons including the first plaintiff. The first plaintiff then amalgamated the small portions which now comprise the suitland. The first plaintiff bought 0.2 of an acre from the first defendant and one Alfred Khisa Bunyoli. He bought the rest of the land from those who had bought theirs from the family of the defendants. The plaintiff sold 0.2 of an acre out of the suitland to the second plaintiff but when he processed title, he processed it in the joint names of himself and the second plaintiff.
2. The defendants did not adduce any evidence as their lawyer's attempt to apply for adjournment was rejected by the court. The plaintiffs therefore proceeded with their case ex-parte.

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3. When the first plaintiff started testifying on 24.2.2015, the court noticed that the evidence of the first plaintiff was leading to a boundary dispute. The court stood him down and made an order that the county surveyor do visit the suit land and plot No. 173 and ascertain whether there was encroachment of either plots into the other. The County Surveyor proceeded to the ground and prepared a report in accordance with the court order which report was filed in court on 25.5.2015.
4. The first plaintiff testified that he obtained title in the joint names of himself and the second defendant. He produced a copy of title as exhibit 1. On 17.3.2014 he was on the suitland fencing it. The third defendant called him. He went towards where the third defendant was. He found a surveyor who was taking measurements. The surveyor started from the defendants plot and came into the suit land. He protested at the survey since there was a survey which had been carried early on. The surveyor went on to put beacons on his land. It is after this that he came to court and filed this suit.
5. The second plaintiff repeated what the first plaintiff had stated only that he added that the

defendants had encroached on to the suit land by 0.9 of an acre.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

6. The plaintiffs had brought this suit seeking a declaration that they are the sole registered owners of the suitland. There is no contention that the two are registered owners of the suitland. The only issue for determination is whether the defendants have encroached on to the suit land and if there is any interference by the defendant to warrant issuance of a permanent injunction.
7. There is a survey report which was prepared at the instance of the court. The report shows that the defendants have closed an access road leading to the suitland and that they are claiming part of the suit land. The surveyor confirmed that the ground measurements conform to the map measurements. It is therefore clear that the defendants are illegally interfering with a road of access leading to the plaintiffs land and they are further claiming part of the suitland.
8. There is no evidence adduced to show that the defendants have or are in the suitland or have done anything on it. What is on record is that they have blocked a road of access leading to the suit land. There is therefore no basis for awarding general damages for trespass.

DISPOSITION

I find that the plaintiffs are the lawfully registered owners of the suit land and a declaration is given to that effect. The defendants are hereby permanently enjoined from interfering with the suit land in any manner. The blocked access road should be opened forthwith. As the claim for general damages is not granted, the plaintiffs claim is allowed as hereinabove with costs to the plaintiffs.

Dated, signed and delivered at Kitale on this 27th day of January,2016.

E. OBAGA

JUDGE.

In the presence of both plaintiffs. Court Assistant - Isabellah.

E. OBAGA

JUDGE

27/1/2016