



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT KISUMU**  
**ELC CASE NO.71 OF 2012**

**WALTER NYAGOL.....PLAINTIFF**

**VERSUS**

**CHAIRMAN BOARD OF GOVERNORS OKOK MIXED SECONDARY  
SCHOOL.....DEFENDANT**

**J U D G M E N T**

1. **Walter Nyagol**, the Plaintiff, filed this suit against the **Chairman Board of Governors, Okoko Mixed Secondary School**, the Defendant, through the plaint dated 10th October 2012 praying for eviction and permanent injunction from his land **Kadero/Got Nyabondo/2171** and costs. The Plaintiff avers that he is the registered proprietor of the said land since 18th August 2004 after he bought it from **Atieno Ogot Owuor** on 13th October 1985. That on 4th August 2004 he discovered that the Defendant had elected a fence and constructed some structures and dug a toilet on part of the land. That he lodged a complaint with the principal to the Defendant and served them with a demand notice but no remedial measures have been taken before filing this suit.

2. The summonses and other suit papers were served on **Tito Oloo**, the principal to the Defendant but no appearances or defence was filed. The Plaintiff then applied for interlocutory judgment vide his letter dated 24th January 2013 which was entered on 24th January 2015.

3. That the formal proof commenced on 18th September 2014 when the Plaintiff testified as PW1 and told how he bought the suit land. He produced a copy of the sale agreement and title deed as exhibits 1 and 2 respectively. He also produced a copy of the demand notice as exhibit 3. The Plaintiff testified that he had enlisted the services of a surveyor who confirmed that the Defendant had encroached onto his land and indicated that he would avail the surveyor as a witness. The second witness is a son to PW1 who testified that the suit land belongs to his father.

4. The issue issues for determination are as follows:

- a) Whether the Plaintiff is the registered proprietor of the said land.
- b) Whether the Defendant has elected a fence, dug a toilet and constructed some structures on a portion of the suit land, and if so, the acreage involved.
- c) Whether the Plaintiff is entitled to the orders sought.
- d) Who pays the costs.

5. The court has considered the pleadings, the list of documents including copy of title deed, certificate of

official search, green card/ register, sale agreement, and District Surveyors report dated 11th July 2012 plus the testimonies of PW1 and PW2 and come to the following determinations:

a) That indeed land parcel **Kadeo/Got Nyabondo/2171** is registered in the names of **Walter Nyagol**, the Plaintiff, since 18th August 2004.

b) That the Plaintiff as the registered proprietor is entitled to the rights and privileges set out under **Section 24 and 25 of the Land Registration Act No.3 of 2012.**

c) That there has been a boundary dispute involving the Plaintiff and the Defendant who are neighbours which appear to have been dealt with by the District Surveyor who did a letter to the District Land Registrar dated 11th July 2012. The Surveyor, at note 3 indicated that **Okok Mixed Secondary School** had fenced off a portion the suit land claiming purchaser's interests. However though the surveyor appear to have drawn a sketch and shaded the area in dispute, that sketch is not attached to the report and the court is not able to assess the acreage or size of the encroached portion. It would therefore be important that the **County Land Registrar** be involved in ensuring that the boundary between the Plaintiff and Defendant's land is repositioned on the correct position.

6. That 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 Kisumu** and **Surveyor** do confirm and reposition, if necessary, the ground position of the boundaries of Land parcel **Kadero/Got Nyabondo/2171** and the neighbouring land belonging to **Okok Mixed Secondary School**. The acreage or size of the encroachment of either parcel onto the other should be established and the report thereof be filed with the court in sixty (60) days by the Land Registrar.

b) That upon the County Land Registrar confirming the common boundary position, the encroaching party should vacate and give vacant possession to the other within (30) thirty days and in default eviction orders to issue.

c) That the Defendant do meet the costs of this suit.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 27TH DAY OF APRIL 2016.**

In presence of;

Plaintiff Present

Defendant Absent

Counsel None

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**27/4/2016**

27/4/2016

S.M. Kibunja J

Oyugi Court Assistant

Plaintiff present

Court: Judgment delivered and dated in open court in the presence of the Plaintiff.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**27/4/2016**