



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC CASE NO.129 OF 2012**

**ANGELINE APONDI JOHANSEN.....PLAINTIFF**

**versus**

**BISHOP PETER ABABU..... 1<sup>ST</sup> DEFENDANT**

**PASTOR JULIUS O. OOKO.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. **Angeline Apondi Johansen**, the Plaintiff, sued **Bishop Peter Adipo Babu and Pastor Julius O. Ooko**, the 1<sup>st</sup> and 2<sup>nd</sup> defendant respectively, through the plaint dated 10<sup>th</sup> December 2012 seeking for permanent injunction, general damages, mesne profits and costs. The Plaintiff avers that she was the registered proprietor of land parcel **Plots 9A and 9B Boro Market**. That she had constructed a permanent structure on **Plot 9A** and was using **Plot 9B** as a loading area pending further development when in 2012, the Defendants trespassed onto the plot and constructed temporary church structure without permission. That the Defendants have declined to vacate despite demand and notice to sue being issued and hence this suit.

2. The Defendants denied the Plaintiff's suit through the statement of defence dated 11<sup>th</sup> February 2013. They aver that the Plaintiff's plot is number 9 and that there is no plot numbers 9A and 9B. They further aver that their church structure is on number **10** and not **9B** as alleged. That the attempt to subdivide Plot 9 into 9A and 9B was meant to swallow Plot 10. That the Plaintiff's plot share a boundary with that of the Defendants' and that there has been no boundary dispute between them. They therefore pray for the Plaintiff's suit to be dismissed with costs.

3. The Plaintiff testified as PW1 and called Lawrence Orono Omuse who testified as PW2. The 2<sup>nd</sup> and 1<sup>st</sup> Defendants testified as DW1 and DW2 respectively. Mr. Siganda and Nyannga advocates represented the Plaintiff and Defendants respectively. At the close of the oral evidence taking, the learned counsel were granted time to file and exchange written submissions. The Plaintiff's counsel filed their submissions dated 18<sup>th</sup> July 2016 on the 19<sup>th</sup> July 2016 but none was filed by the defendants counsel.

4. The following are the issues for the courts determination:

a) Whether plot No.9, 9A, 9B and 10, Boro Market exists and who is the registered owner of each of the four plots.

b) Whether Plot 9 Boro Market has been subdivided into plot 9A and 9B and if so who is the

registered proprietor.

- c) Whether plot 9, 9A and 9B occupies the same ground position with Plot 10 or a part thereof.
- d) Whether the Defendants are the registered proprietors of a plot neighbouring that of the Plaintiff, and if so what plot number.
- e) What prayers to issue if any.
- f) Who pays the costs.

5. The court has carefully considered the pleadings by both sides, oral and documentary evidence presented, submissions by Plaintiff's counsel and come to the following findings:

a) That from the oral and documentary evidence adduced by the Plaintiff and his witness, PW2, from the County Government of Siaya, the Plaintiff is the owner of plot numbers **9A** and **9B** which are subdivisions from plot number **9 Boro Market**. That their testimony also confirms that the only plot Number **10, Boro Market** that exists is across plots numbers 9A and 9B and between them is a road.

b) That from the testimony of PW2, the Defendants had been given a plot number 10 allegedly positioned on the ground on where plot number 9B is but that allocation was by error as it did not exist on the ground.

c) That the evidence of both PW1 and PW2 shows the church structure on Plot 9B was put up on or about 2012 while DW1 and DW3 evidence was that they established their church on the plot number 10 Boro Market in 2003 and have used it without any disruptions until 2011. That the Defendants had initially leased the plot from the surviving widow of one of the five original allottees. That in 2008 the Siaya Council advertised plots, including number 10, for allocation and they paid the fees required and the plot was allocated to them on 12<sup>th</sup> May 2008.

d) That from the documentary evidence availed the only plot number 10, Boro Market that exists does not share any boundary with Plot numbers 9A and 9B as it is adjacent to the two and is separated by a ten (10) metre lane or road. That the fact that the Siaya County Government supported the Plaintiff as against the Defendants, and issued notice to the Defendants to vacate from plot number 9B clearly shows that the alleged plot number 10 on the ground where Plot 9B was positioned on was not recognized by that office.

e) That the Defendants recourse could only be against the authority that allegedly granted or allocated a non – existent plot number **10 Boro Market** to them. That the Defendants did not include a counterclaim against the Plaintiff in their filed statement of defence.

f) That whereas the Defendant may have been innocently misled that the plot 10 Boro Market allocated to them was positioned on the ground where they established a temporary church house, the evidence availed before this court shows clearly that ground is for plot number 9B, Boro Market which belongs to the Plaintiff. That they should therefore give vacant possession to the Plaintiff if they have not already done so.

g) That for reasons in (f) above and further that the Defendants had put a church house on the contested plot and that at one time the Plaintiff had allowed the church to continue being operated there, the court will not order any damages or mesne profits but the Plaintiff is entitled to costs.

6. That flowing from the foregoing the court finds that the Plaintiff has proved her case against the Defendants on a balance of probabilities and enters judgment for her against the Defendants in the following terms;

a) That a permanent injunction is hereby issued restraining the Defendants by themselves, servants, agents or otherwise howsoever from remaining on or continuing in occupation of the Plaintiff's plot number 9B Boro Market, Siaya.

b) The Defendants do pay the Plaintiff's costs of the suit.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 16<sup>TH</sup> DAY OF NOVEMBER 2016**

In presence of;

Plaintiff Absent

Defendants Present

Counsel        Mr Kiufeo Siganga for Plaintiff

                  Mr. Were for Nyanga for Defendant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**16/11/2016**

16/11/2016

S.M. Kibunja Judge

Oyugi court assistant

Defendant present

Mr Kiufeo Siganga for Plaintiff

Mr. Were for Nyanga for Defendant.

Court: Judgment dated and delivered in open court in presence of Mr. Kiufeo Siganga for the Plaintiff and Mr. Were for Nyanga for the Defendant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**16/11/2016**