

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

ELC CASE NO. 162 OF 2016

JANE NANGUNDA KABWERE.....PLAINTIFF

VERSUS

BENARD O. OWORI.....DEFENDANT

JUDGMENT

1. The Plaintiff Jane Nangunda Kabwere sued the Defendant for trespassing on her land parcel numbers BUKHAYO/BUGENGI/10010 and 11588. She pleaded that she stands to suffer great loss if the Defendant proceeds with the action of using the suit land. Therefore she prays for orders that;

a. An order of permanent injunction restraining the Defendant by, their agents and/or servants from interfering with LR. BUKHAYO/BUGENGI/11588.

b. Costs of the suit

c. Any other relief this Hon. Court deems fit to grant.

2. The Defendant filed grounds of opposition dated 20th February, 2018 in opposing the application dated 14th December 2016. Attached to the grounds was a statement of defence. However, the statement of defence was in respect of a different case and different parties in Busia CMCC Succ Cause no. 6 of 2017 between Nancy Christabel Kalegi & another Vs. Oliver Muveta Warenga. There was no defence to the claim filed. In a replying affidavit filed on 26th March 2018, the Defendant deposed that he does not own any land neighbouring the Plaintiff's land or destroying any boundaries. He also denied entering the Plaintiff's land as alleged.

3. The Plaintiff gave her evidence on 13th January, 2021 stating that the Defendant sold to her parcel No. **BUKHAYO/BUGENGI/10010 and 11588**. Thereafter she processed and got titles in her name. The witness averred that she brought this suit when the Defendant came and removed the boundary marks. The Plaintiff concluded that the Defendant stopped using the two plots after the order of temporary injunction was served on him. However, the boundaries have not been replanted. She produced copies of the titles as Pex (a) & (b) and copy of the search as Pex 2 and P3 form issued to her servant Albert Sandagi as pex. 3. The Plaintiff urged the court to grant the orders sought.

4. The Plaintiff filed her written submission on 11th August, 2021 citing the provisions of Section 28 of the Land Registration Act and Article 60 (c) & 64 of The Constitution in support of her claim.

5. The evidence presented by the Plaintiff has not been contradicted. Although the Defendant did not file a statement of defence, the pleadings filed on his behalf demonstrate that he has no claim over the suit properties. He denied destroying the boundaries of the suit parcels and also denied using the land. The Plaintiff asserted that the Defendant stopped the interference only after the order had been served which orders of temporary injunction issued in case. The question of trespass has thus been resolved.

6. The Plaintiff stated that the boundaries that were destroyed have not been replanted. She did not adduce evidence of what boundary features that had been destroyed. The Plaintiff did not also plead for an order for replanting of the boundaries and the replanting to be done between the suit plots and which other plots. The Defendant had deposed that he had no land neighbouring the suit plots. For an order of replanting to be made, the owners of neighbouring plots needed to have been given a hearing.

7. This court enters judgment for the Plaintiff only as prayed in the plaint on the following terms.

a. That an order be and is hereby issued restraining the Defendant by, their agents and/or servants from interfering with LR. BUKHAYO/BUGENGI/11588.

b. Each party to meet their respective costs of the suit.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 27TH DAY OF JAN, 2022.

A. OMOLLO

JUDGE