



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUSIA

ELC NO. 143 OF 2016

SIMON OKUMU OKINDA1ST PLAINTIFF

JANE NAMENGE OKUMU.....2ND PLAINTIFF

-VERSUS -

JONATHAN ROBI KOFIA.....DEFENDANT

J U D G M E N T

1. Vide a Plaint dated 26th October, 2016, the Plaintiff impleaded the Defendant in this suit and prayed for judgement against the Defendant for:

a. An order for permanent injunction restraining the Defendant from trespassing, cultivating, developing or otherwise dealing with the Plaintiff's land measuring 2.34Ha or in any way obstructing the Plaintiff from taking vacant possession;

b. Costs of this suit;

c. Any other relief that this Honourable Court deems fit.

2. The Plaintiffs aver that they are joint proprietors of L.R No. BUKHAYO/KISOKO/1774 measuring 2.34Ha which parcel neighbours the Defendant parcel L.R No. Bukhayo/Kisoko/6345. The plaintiffs allege that the Defendant has encroached onto their land parcel number L.R No. Bukhayo/Kisoko/1774 by 1 $\frac{3}{4}$ acres on the southern part which he has annexed to his parcel L.R No. Bukhayo/Kisoko/6345. That the Defendant has planted boundaries on the encroached parcel therefore preventing them from full enjoyment and use of their entire parcel of land. That despite lodging a boundary dispute with the Busia Land Registrar and the Surveyor the complaint has never been addressed hence the present suit.

3. Despite service of the summons to enter appearance and the pleadings upon the Defendant, he did not file a defence to the claim. Interlocutory judgement was entered for the Plaintiffs against the Defendant on the 3rd of February, 2017. The matter proceeded by way of formal proof on the 9th of February, 2022 and the 1st Plaintiff testified as the sole Plaintiffs' witness. **PW1** stated that he lived in Nambale town and the Defendant was his neighbour. He stated that his land was Bukhayo/Kisoko/1774 while the Defendant's is land No. 6545. That he has sued the Defendant because he has encroached on his land.

4. In the statement and the affidavit evidence **PW1** stated that he filed the suit seeking orders of permanent injunction restraining the Defendant from interfering with their land parcel. That before filing this suit, they approached the Chief, Nambale Township to assist and resolve the issue and who then referred them to Court. That the Busia County Surveyor visited the parcels of land as ordered by the Court and prepared his report dated 25th April, 2019. That it is evident from the survey report that the Defendant has encroached on LR No. Bukhayo/Kisoko/1774 by an area measuring approximately 0.61Ha.

5. He produced the documents on his list of documents dated 26th October, 2016 which included the Chief's letter-Pex1, copy of the Title deed- Pex2, the green card- Pex3 and the certificate of official search- Pex4. He also produced the County Surveyor's report date 25th April, 2019- Pex5. He concluded his evidence by urging this Court to grant him the orders as per the Plaint.

6. The suit is undefended thus most issues are uncontested and the plaintiffs only needed to demonstrate that indeed there was encroachment on their parcel of land L.R No. Bukhayo/Kisoko/1774. The Plaintiffs had pleaded that the Defendant encroached into their land parcel number L.R No. Bukhayo/Kisoko/1774 by 1 $\frac{3}{4}$ acres on the southern part and have annexed the suit portion to his parcel L.R No. Bukhayo/Kisoko/6345. The Land Registration Act, no 12 of 2012 at section 18(3) provides as follows:

Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to the boundaries and situation as may be necessary;

Provided that where all the boundaries are defined under section 19(3), the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act (Cap.299).

7. The Busia County Surveyor, Julius Mulusa visited the two parcels of land in dispute and prepared a report dated 25th of April, 2019. He stated in his report that parcel Bukhayo/Kisoko/1774 has been encroached from the west part of the neighbouring parcel Bukhayo/Kisoko/6545. Mr Mulusa added that this might have occurred during sub-division of parcel Bukhayo/Kisoko/1166 done in 2019 which created to 6643,6544, 6545 and 6546. His findings were as below:

- a. The boundary between parcel 1774 and 6645 seem to have an encroachment of magnitude;**
- b. Along the river is squeezed from approx. 56m to 27m along point AB. Along point CD is ok.**

The area of encroachment measures 0.61ha approx.

8. The Surveyor's report suffices to confirm that the Defendant has encroached on the Plaintiff's parcel of land. Based on the expert's report, and on account that the defendant has not countered the Plaintiffs' evidence, it safe to conclude that the plaintiffs have established a case against the Defendant on encroachment of their land number Bukhayo/Kisoko/1774 by 0.61Ha.

9. Consequently, I enter judgement in favour of the Plaintiff as prayed in the plaint that:

- a. An order of permanent injunction be and is hereby issued restraining the Defendant, his agents, servants, employees and such persons acting through him from encroaching on and/or interfering with the Plaintiffs' possession of land parcel number BUKHAYO/KISOKO/1774 more particularly the portion measuring 0.61ha as identified by the County surveyor;**
- b. The defendant is ordered to surrender vacant possession of the disputed portion within 60 days hereof, in default an eviction order to issue to remove his structures, trees or any plants from from the disputed portion of Land Parcel Number BUKHAYO/KISOKO/1774**
- c. The plaintiffs are awarded half costs of this suit.**

DATED, SIGNED AND DELIVERED AT BUSIA THIS 21ST DAY OF APRIL, 2022

A. OMOLLO

JUDGE