



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CIVIL SUIT NO.15 OF 2011

ERIC LANGAT.....PLAINTIFF

VERSUS

PAUL BII.....DEFENDANT

J U D G M E N T

(Suit for vacant possession; plaintiff being owner of premises; defendant previously a tenant; notice to vacate having been issued but defendant refusing to move out thus prompting the suit; no defence filed by defendant; plaintiff's case uncontroverted; judgment entered for the plaintiff for vacant possession and general damages for trespass; claim for loss of use unproven and disallowed; costs to plaintiff)

This suit was commenced by way of plaint filed on 14th March, 2011. Despite being served with summons, the defendant neither entered appearance nor filed defence. Neither did he attend at the hearing of the suit although he was served with a hearing notice.

The case of the plaintiff is that he is the registered owner of the plot described as Plot No. 12, Kapkugerwet Market within Kericho County. The plaintiff acquired this plot after purchasing it from the previous owner, one Fredrick Mindagat Chumo (Deceased) through an agreement signed on 31st October, 2005. At the time of purchase, the defendant was a tenant. The plaintiff in the year 2007 gave notice of termination of the tenancy of the defendant but the defendant failed to vacate the same. The property was later condemned by the Public Health Services and notice to vacate issued, but still the defendant stayed put. The plaintiff then filed a suit before the Magistrate's Court for eviction. He obtained judgment in his favour but the same was later set aside. He opted to withdraw that case and file this matter citing issues with jurisdiction. In his suit, the plaintiff wants vacant possession of the premises, damages for use and occupation of Kshs. 4,000/= per month from 1st January 2007, costs of the suit and interest.

As stated earlier, the defendant neither entered appearance nor filed defence. The case of the plaintiff is therefore uncontroverted. In his testimony, the plaintiff produced documentary proof of ownership of the premises. He also stated that at some point the defendant left the premises to a caretaker who is now deceased. I see no reason why the plaintiff's case for vacant possession should not succeed. As to the claims for damages, I am afraid that I cannot give any damages for want of proof. No evidence was led that the plaintiff suffered the pleaded loss of Kshs. 4,000/= per month. In absence of proof, any award that I make under this head will be purely speculative. I however take note that the defendant continued being in the premises even after notice to vacate was issued. His stay thereafter was an act of trespass. I will

award a token of Kshs. 50,000/= as general damages for trespass in recognition that the proprietary rights of the plaintiff were violated by the defendant. I will also give costs of the suit and interest on damages from the date of this judgment to full payment.

I now make the following final orders :-

1. I order the defendant to forthwith give vacant possession to the plaintiff and if the defendant has already left the premises, the plaintiff is at liberty to take full possession of it.
2. The claim for loss of use of Kshs. 4,000/= per month is hereby disallowed.
3. The plaintiff is hereby awarded the sum of Kshs. 50,000/= as general damages for trespass the said amount to attract interest at court rates from the date of judgment.
4. The plaintiff shall have costs of the suit.

It is hereby ordered.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 27TH DAY OF MARCH, 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

In the presence of

Plaintiff acting in person

Defendant- Absent

Court assistant-Ruth