



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ENVIRONMENT AND LAND CASE NO. 21 OF 2005

PETERSON MOTURI MORANGA PLAINTIFF

VERSUS

1. KENNEDY MARUBE NYABUTO

2. GEORGE MORARA NYABUTO..... DEFENDANTS

JUDGMENT

1. The Plaintiff brought this suit against the defendants on 2nd March, 2005 seeking an order for the eviction of the defendants from all that parcel of land known as **LR. No. Central Kitutu/Mwamosioma/1544**(hereinafter referred to as “**the suit property**”). The Plaintiff’s suit was brought on the grounds that the Plaintiff is the registered proprietor of the suit property and that the defendants have since the year 2002 trespassed on the suit property and occupied the same thereby denying the Plaintiff the possession and use thereof. The Plaintiff claimed that a demand has been made on the defendants to vacate and hand over vacant possession of the suit property to the Plaintiff but they have declined and/or refused to do so thereby rendering the filing of this suit inevitable. The defendants were served with the Summons to enter appearance but they failed to do so within the time prescribed. The Plaintiff requested for interlocutory judgment against the defendants which was entered on 13th April, 2006. The matter was thereafter listed for formal proof on 23rd July, 2013. Although it was not necessary to serve the defendants with a hearing notice interlocutory judgment in default of appearance having been entered against them, the Plaintiff nevertheless caused a notice of the hearing that was scheduled for 23rd July, 2013 to be served upon them. On the hearing date, the defendants did not appear and I allowed the hearing to proceed their absence notwithstanding. The Plaintiff gave evidence and called one witness in proof of his case against the defendants.
2. In his evidence, the Plaintiff testified that in the year 2001, the Plaintiff purchased the suit property which is a commercial plot within Kisii town from one, Andrew Nyabuto Momanyi (“Momanyi”) at a consideration of Ksh. 490, 000.00 which he paid in full. The agreement for sale between him and Momanyi was prepared and witnessed by an advocate. He produced a copy of the said agreement as Plaintiff’s Exhibit 1. After entering into the said agreement for sale, Momanyi transferred the suit property to him and he was thereafter issued with a title deed on 11th April, 2002. He produced a copy of the said title deed as Plaintiff’s Exhibit 2. On 5th December, 2012, he carried out a search on the title of the suit property and was issued with a certificate of official search which showed that the suit property is registered in his name. He produced the said certificate of official search and the receipt for the payment he made therefor as Plaintiff’s Exhibit 3. He testified further that the defendants herein have denied him the

opportunity to develop the suit property in that they have obstructed him from taking possession of the suit property. He stated that the defendants are the children of Momanyi who sold to him the suit property and that Momanyi has asked them to vacate the suit property and move to Momanyi's ancestral land but they have refused to do so. He stated that Momanyi has not denied him possession as it is the defendants who have prevented him from using the suit property. He urged the court to issue an order for the eviction of the defendants from the suit property. The Plaintiff's witness was **Andrew Nyabuto Momanyi** ("**Momanyi**"). He testified that he is a retired prisons officer and that the Plaintiff is known to him. He testified that he sold to the Plaintiff the suit property and that the defendants who are his sons have continued to occupy the same even after he had asked them to vacate. He testified that he has put up houses for the defendants on his ancestral land where he lives. He stated that the suit property which he sold to the Plaintiff was his own land which he purchased. He stated that the defendants should vacate the suit property and stop disturbing the Plaintiff.

3. After the evidence of the Plaintiff and his witness aforesaid, the Plaintiff closed his case. The Plaintiff's advocate Mr. Sagwe applied to put in written submission which application was allowed by the court. The Plaintiff filed his written submissions on 13th August, 2013. I have considered the Plaintiff's case as pleaded and the evidence tendered in proof thereof. I am satisfied that the Plaintiff has proved his case against the defendants on a balance of probability. The Plaintiff has proved that he is the registered proprietor of the suit property. He has shown how he acquired the suit property and that he holds a title thereto. The defendants did not defend the suit. The evidence given by the Plaintiff and his witness is therefore not controverted. In the absence of any explanation as to the basis on which the defendants have continued to occupy the suit property, the only logical conclusion that this court can make is that the defendants are occupying the suit property unlawfully. The defendants are therefore trespassers on the suit property. The Plaintiff having proved that he is the registered proprietor of the suit property and that the defendants are trespassers thereon, the Plaintiff is entitled the relief sought.
4. Due to the foregoing, I hereby enter judgment for the Plaintiff against the defendants jointly and severally in terms of prayers (a) and (b) of the Plaint dated 2nd March, 2005.

Delivered, dated and signed at KISII this 24th day of January 2014.

S. OKONG'O

JUDGE

In the presence of:

Mr. Okenye h/b for Sagwe for the Plaintiff

N/A for the 1stDefendant

N/A for the 2ndDefendant

Mobisa Court clerk

S. OKONG'O

JUDGE