



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 3 OF 2014

JAMIN KADASIA LUBANG'A PLAINTIFF

VERSUS

FESTO LUKHANYO DEFENDANT

JUDGEMENT

INTRODUCTION

1. The Plaintiff brought this suit against the defendant claiming an order of eviction against the defendant from Plot No. Namanjalala market Block "A" Plot 10. He also sought for an order of permanent injunction restraining the defendant or any other person claiming under him from interfering with the suit property.
2. The defendant who was duly served with summons to enter appearance and file defence neither entered appearance nor filed defence. The plaintiff applied for entry of judgement and the case proceeded by way of formal proof.

PLAINTIFF'S CASE

3. The Plaintiff testified that he was allocated the suit land in 2009. Sometime around 3rd December, 2013, the defendant colluded with others and forcefully occupied the plaintiff's land. The plaintiff has demanded that the defendant moves out of the suit land but the defendant has declined prompting him to file this suit.

ANALYSIS OF EVIDENCE

4. The Plaintiff testified that he has been paying rates in respect of the suit land. He produced a payment request document exhibit 2 for rates which is in his name. This document is dated 16/8/2013 and is from the County Government of Trans Nzoia. The plaintiff also produced a letter from the County Council of Nzoia confirming that the suit land was allocated to the plaintiff as per their records. This letter is exhibit 1.
5. The Plaintiff produced an area list exhibit 3. This area list shows that the plaintiff is owner of Plot No. 10 Namanjalala market. The same list shows that the defendant is owner of Namanjalala market Block (D) (A) Plot No. 43.

DECISION

6. The Plaintiff's evidence remains uncontroverted. On the basis of the documents produced by the plaintiff, I find that he has proved his case on a balance of probabilities. A declaration is hereby issued that the plaintiff is the lawful owner of Plot No. 10 Block "A" Namanjalala market. A

permanent injunction is hereby issued restraining the defendant or his agents from interfering with the suit land. The plaintiff and/or his agents should be evicted forthwith from the property. Costs of this suit are hereby awarded to the plaintiff. There is no basis upon which this court can award damages for nonuser of the property.

Dated, signed and delivered at Kitale on this 26th day of May, 2014.

E. OBAGA

JUDGE

In the presence of Mr Waweru for plaintiff. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

26/5/2014