



REPUBLIC OF KENYA.
IN THE HIGH COURT OF KENYA AT KITALE.

CIVIL SUIT NO. 92 OF 2004.

DOUGLAS NGUNJIRI WAICHONGO ::::::::::::::::::::;: PLAINTIFF.

VERSUS

PAUL LAGAT)	
FREDRICK GICIMU KURIA)	
SIMON KAMAU NG'ANG'A)	
PETER JUMA MWANDA)	
RICHARD WAFULA)	:::::::::::::::::: DEFENDANT.
JACKSON KOSKEI)	
FRANCIS MWAURA)	
JOSEPH KIRWA CHUMO)	
DANIEL KIPLAGAT)	
PAUL KIRWA CHUMO)	

J U D G M E N T.

INTRODUCTION.

1. The subject matter of this suit is a commercial building at Moi's Bridge which stands on L.R. No. 838/22 (original No. 838/8/2). The first to 7th defendants were tenants in the said premises. In the year 2000, the plaintiff bought the property (suit premises) from Hasham Lalji Properties Ltd. The plaintiff then wrote to the 7 defendants to start paying rent to him but they declined. This prompted the plaintiff to file this suit seeking orders of eviction against the seven defendants.
2. The 8th to 10th defendants made an application to court seeking to be enjoined as defendants. They were allowed to come into the suit. They filed their defence and raised a counter-claim in which they claim that they are the lawful owners of the suit premises.
3. The plaintiff testified on 5/6/2014 and closed his case on that day. The defence was given 17/9/2014 for defence hearing but come that day, the defendants were not in court and no convincing reason was given for their absence. An application for adjournment was made on behalf of 8th, 9th and 10th defendants which application was rejected. The defendants counsel then closed the defence case.

PLAINTIFF'S CASE.

4. The plaintiff testified that he is the owner of the suit premises which he bought from Hasham Lalji property Limited on 4/3/2000. There were tenants in the suit premises. He asked his advocate to write a letter to the tenants to start paying rent to him. Some tenants paid rent to him for about three months and stopped. The tenants were arguing that they should have been given priority in purchase of the suit premises.
5. When the tenants declined to pay rent to him, he went to the vendor who wrote a letter to the family of Chumo who were the persons occupying the premises before the property was sold to him.

The 8th to 10th defendants come from the Chumo family. The plaintiff

testified that, he has been paying rent to the County Council of

Wareng.

ANALYSIS OF EVIDENCE.

6. The plaintiff produced a deed of assignment (exhibit 1) duly stamped and registered. The deed of assignment is dated 6/5/2000. the plaintiff also produced letters addressed to the various tenants who were occupying the suit premises. These letters were produced as exhibit 2 (a) to (d). The plaintiff's lawyers wrote demand letters to the tenants asking for rent. These letters were produced as exhibits 3 (a) to (f).
7. When the first to 7th defendants refused to pay rent to him, he engaged the services of M/s. Nyairo & Co. Advocates who wrote demand letters to them. These demand letters were produced as exhibit 4 (a) to (1). It is clear from the documents produced by the plaintiff that he is the owner of the suit premises. He produced a demand for rates from the County Council of Wareng (exhibit 6). The demand is in his name.
8. The plaintiff has not enjoyed the fruits of the suit premises since 2000. The evidence of the plaintiff was not controverted. It was not even shaken during cross-examination.

DETERMINATION.

9. I find that the plaintiff has proved his case against the defendants on a balance of probabilities. A declaration is hereby issued that he is the sole owner of LR. No. 838/22 (original No. 838/8/2). The defendants should be evicted from the suit premises forthwith. As the 8th, 9th and 10th defendants did not offer any evidence in support of their counter-claim, the same is hereby dismissed with costs to the plaintiff. The plaintiff shall also have costs of the suit.

[Dated, signed and delivered at Kitale on this 10th day of December, 2014.]

E. OBAGA.

JUDGE.

In the presence of Mr. Teti for plaintiff and Mr. Aseswa holding brief for M/s. Mufutu for defendants.

Court Clerk – Isabellah.

E. OBAGA.

JUDGE.

10/12/2014.

Mr. Aseswa:- I pray for stay of execution for 30 days.

Mr. Teti:- I have no objection.

Court:- Stay of execution is granted for 30 days.

E. OBAGA.

JUDGE.

10/12/2014.