



REPUBLIC OF KENYA

High Court at Kitale

Civil Suit 17 of 2006

MARTHA

BOMETT }

BENARD KIPKOECH BOMETT PLAINTIFFS

VERSUS

CALMAX WANYAMA SIMIYU DEFENDANT

J U D G M E N T

The Plaintiffs Martha Bomett and Bernard Kipkoech Bomett brought this suit against the Defendant Calmax Simiyu seeking an order of eviction against the Defendant and a permanent injunction restraining the Defendant from interfering with Plot No. 80/Kosprin Shirika Settlement Scheme. The Defendant who was duly served with Plaint and Summons to enter appearance neither entered appearance nor filed defence. The hearing proceeded by way of Formal Proof. During the hearing, the 1st Plaintiff testified that she is the administratrix of her late husband George Bomett together with her son the 2nd Plaintiff herein. Prior to the death of her husband, her husband had been allocated Plot No. 80 at Shirika Settlement Scheme. She produced letter of allotment (*exhibit 1*). She produced a receipt for Kshs. 3,025/- dated 23/11/1983 issued to her late husband by the Settlement Fund Trustee (*exhibit 2*). She also produced another receipt for Kshs. 45,000 dated 24/04/1997 being accumulated charges due to the Settlement Fund Trustee paid after the death of her husband (*exhibit 3*). She also produced a charge from the Ministry of Land, Settlement and Physical Planning (*exhibit 4*) which shows that her late husband was allottee of Plot No. 80.

In 1999, the Defendant herein invaded the land and has since prevented her from accessing the land. She complained about the invasion to the Director of Land Adjudication and Settlement who wrote a letter to the District Land Adjudication and Settlement Officer Trans-Nzoia, confirming that the land had been allocated to the late George Bomett (*exhibit 5*).

In 2001, the Defendant was arrested and charged for forcible detainer and was convicted and fined Kshs. 25,000 in default serve 6 months imprisonment. The proceedings and judgment were produced as (*exhibit 9*). This conviction notwithstanding, the Defendant has refused to move out of the land. I have carefully considered the evidence adduced by the 1st Plaintiff which is not challenged. The 1st Plaintiff succeeded in showing that Plot no. 80 at Shirika Settlement Scheme was allocated to her late husband. She has since taken out Letters of Administration for the estate of her husband which grant has already been confirmed. She has gone ahead to pay for conveyancing fees. It is clear that the land has vested in her by virtue of succession. She is entitled to the exclusive use of the same. The Defendant has

no business being on the suitland. I find that the Plaintiffs have proved their case on a balance of probabilities. Their claim succeeds with the result that an order of eviction against the Defendant and or his servants is hereby issued as prayed for in the Plaint. The Defendant is also hereby permanently injuncted from in any way interfering with Plot No. 80/Kosprin Shirika Settlement Scheme. The Plaintiffs shall have costs of this suit.

Dated, signed and delivered in Open Court on this 16th day of May, 2013.

E. OBAGA

JUDGE

In the presence of Mr. Chepkwony for Plaintiff.

Court Clerk: Koskey.

E. OBAGA

JUDGE

16/05/2013