



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL SUIT NO. 96 OF 1999**

**MATAYO NDILA CHEPTROT .....PLAINTIFF**

**VERSUS**

**PHILLIP LOCHOK ..... DEFENDANT**

**RULING**

The Applicant Matayo Ndila Cheprot filed a Notice of Motion dated 20/07/2012 seeking the following prayers:-

1. *That the defence dated 12/10/2004 filed by one Samuel Kiptui Ngeywa otherwise referred to as the "3rd Party" be struck out.*
2. *That judgment be and is entered on the Defendant's admission dated 06/10/2003.*
3. *That by way of a mandatory injunction the said Samuel Kiptui Ngeywa, his family, servants and/or any other person claiming interest through him do remove themselves from Plot 5 Kitalale Scheme measuring 2 ½ acres.*
4. *That costs be provided for.*

The Applicant contends that he filed a suit against the Defendant Philip Lochok. The Defendant entered appearance but failed to file defence. On 26/11/1999 the Applicant obtained interlocutory judgment against the Defendant. On 14/11/20003, the Defendant admitted the Plaintiff's claim. The Plaintiff/Applicant prays for striking out of the 3rd party's defence and entry of judgment in his favour on admission. The 3rd party opposed the application based on Replying Affidavit filed in Court on 10/05/2013. In the Affidavit, the 3rd party contends that the suit herein had been dismissed on 26/05/2011 and that as far as he is concerned, the Defendant was never served with summons to enter appearance and that the admission dated 06/10/2013 is a forgery. The 3rd party contends that he bought the suit land from one Patrick Moikut who had purchased it from the Defendant. He contends that he has a good case and as such his defence should not be struck out.

I have considered the Applicant's application as well as the response to the same by the 3rd party. Contrary to the 3rd party's allegation that this suit was dismissed on 26/05/2011, the order for dismissal of the suit was set aside following an application for review vide a ruling of 12/07/2012. The 3rd party's contention that the Defendant herein was not served with summons to enter appearance is without basis. The Defendant was served with summons to enter appearance and he entered appearance on 10/11/1999 through the firm of Atuti Bwonyari & Co. Advocates. The Defendant subsequently admitted the Plaintiff's claim against him in writing on 06/10/2003. The Defendant again reiterated his admission in his Affidavit of 13/06/2013. The 3rd party has no direct claim against the Defendant. The 3rd party contends that he bought the suit land from one Patrick Moikut who had bought the same from the Defendant. The Plaintiff has countered this contention through a Further Affidavit in which he contends that indeed there was an intention on the part of the Defendant to sell the land to the said Patrick Moikut but which sale did not go through. The Applicant annexed a copy of a letter from the Area Chief confirming the position. The 3rd party did not deny these facts.

The Defendant has expressly admitted the Plaintiff's claim. The 3rd party has no claim against the Plaintiff. The 3rd party has no direct claim against the Defendant. It is not the Defendant who allegedly sold the land to the 3rd party. The 3rd party's claim is against Patrick Moikut who is not a party to this suit. I have looked at the 3rd party's defence in which he *inter-alia* contends that the sale between Plaintiff and the Defendant had no blessings of the Land Control Board. The 3rd party has no business to

raise the issue of consent of the Land Control Board. It is the Defendant who should have raised this concern but he has already admitted the Plaintiff's claim against him. I find that the 3rd party's defence has no basis as far as the Plaintiff's case is concerned. The correspondence the third party has annexed to his Replying Affidavit only shows that he is the one in possession of the land. The Plaintiff's contention is that the occupancy of the land by the 3rd party is illegal as the land belongs to him. I proceed to strike out the 3rd party's defence and enter judgment in favour of the Plaintiff on the basis of admission. The 3rd party has no basis upon which he should continue remaining on the Plaintiff's land. He should voluntarily move out failing which, the Plaintiff shall be at liberty to have him evicted. The Plaintiff/Applicant shall have costs of the application.

It is so ordered.

**Dated, signed and delivered in Open Court on this 11th day of July, 2013.**

**E. OBAGA**

**JUDGE**

In the absence of parties who were aware of date of ruling. Court Clerk: Joan.

**E. OBAGA**

**JUDGE**

**11/07/2013**