



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

CIVIL CASE NO. 41 OF 2006.

DOMINIC OGETO MOKAYA ::: APPLICANT.

VERSUS

MARY WAMBOI ::: RESPONDENT.

R U L I N G.

1. The Notice of Motion dated 16th July, 2009 as I understand it, it seeks for summary judgment against the defendant and also seeks for the defence by the defendant to be struck out. This application is brought under the provisions of Order XXXV Rule 1 (1) Order VI rule 13 (1) and (c). This application is predicated on the grounds that the plaintiff is the registered proprietor of a parcel of land known as Trans Nzoia/Sitatunga/18. It is stated that the defendant is a trespasser on that parcel of land. She has no defence capable of proceeding to trial, the defence on record is merely meant to delay the effectual conclusion of the matter. This application is also supported by the plaintiff's affidavit sworn on 14th August, 2009.
2. According to the applicant he purchased the suit premises on 10th May, 1994 from **Francis Kabindio** for Ksh. 130,000/= where upon the vendor transferred to him the property and he charged it to Kenya Commercial Bank. He enclosed a copy of the title which he claims is protected under section 27 and 28 of the Registered Land Act (Cap 300).
3. The applicant also claims that all his efforts to have the defendant vacate the suit premises had been unsuccessful, thus he filed the present suit seeking for an order of eviction. This application was filed and served upon the respondent. However, the respondent has not filed any replying affidavit or grounds of objection.
4. I have considered this application, the grounds in support as well as the defence filed by the respondent. The plaintiff has exhibited a copy of the title for the suit premises which was issued on 10th May, 1994. The plaintiff is the registered proprietor of the suit premises. The plaintiff claims to have bought the land from Francis Kabindio. The defendant claims that the plaintiff fraudulently obtained the title which was originally their family land. However there is no material to support the allegations of fraud as the respondent did not file any replying affidavit or grounds of opposition to support the contention that the suit premises belonged to her family.
5. Accordingly the application dated 16th July, 2009 which in any event is not opposed is hereby allowed. The defence by the defendant dated 29th May, 2006 is struck out and plaintiff is granted prayer

No. (a) Of the plaint. The defendant is hereby given 60 days within which to vacate the plaintiff's parcel of land no. Trans Nzoia/Sitatunga/18 and failure to do so, the plaintiff may evict the defendant.

Ruling read and signed this 17th day of February, 2011.

**M. K. KOOME.
JUDGE.**