



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISUMU**

**CIVIL SUIT NO. 136 OF 2010**

**PHEOBE ATIENO NYANGO.....PLAINTIFF**

**VERSUS**

**BENSON KIMANI.....DEFENDANT**

**JUDGMENT**

The plaintiff filed this suit seeking the following orders against the defendant:-

- (a) Order of eviction of the defendant from land parcel number KISUMU /FORT TERNAN 68/434**
- (b) Costs of suit.**
- (c) Interest.**
- (d) Any other relief that this court may deem fit to grant.**

The defendant after being served with the summonses and the plaintiff did file a defence on 16<sup>th</sup> October 2010.

During the hearing the plaintiff testified that he purchased the suit property from one **Josephat Karanja Mbole** for a total purchase consideration of Kshs. 500,000 on 5<sup>th</sup> February 2009. After payment stated above she embarked on the veyancing process through the land Control Board and she obtained the consent of the board and she obtained the title on 24<sup>th</sup> February 2009. She stated that at the period of purchasing the suit property, the land was vacant and this is confirmed by paragraph 2 of the Sale agreement exhibit P1.

She further said that she learned with shock when she came back to the suit land that the defendant had trespassed on the land and had constructed some structures. She made efforts to have him out of the land by writing letters including the letter from the defendant father exhibit number 11 advising the defendant to vacate the land and joint him in Nakuru. The defendant refused hence this suit.

The defendant on the other hand has filed defence denying the said sale and if anything, he further contents, he has obtained the use of the land by the provisions of adverse possession. In his evidence he argued that he has nowhere to go since he was born and brought up on the suit land. He said that his father didn't notify him of the sale as they had been chased away during the post election violence in early 2008.

On my analysis, it's not in dispute that the seller of the land John Karanja Mbole is the father to the defendant. It's not in dispute that he sold the land to the plaintiff. What is not clear however is whether or not at the time of the sale the applicant was in the suit property. He didn't call any witness to support his arguments. He didn't call any further evidence that he was an Internally Displaced Persons (IDP). The court takes judicial notice of this issue of IDP but one has to lay the basis and established the facts. Each case has to be handled on its own merits. I have no prove before me that indeed the defendant was such a person.

The defendant has further argued that the land in question was an ancestral land. But on the same breath he has said that the land was a settlement scheme owned by Settlement Fund Trustees (S.F.T). If the land belonged to Settlement Fund Trustees then it was a government land. He said that his father was given the land after working for the said Settlement Fund Trustees. The same cannot be said to be an "ancestral land."

Further he has not laid any basis to establish that indeed his father held the land in trust for him and his siblings. The land was registered and given to the defendant father on 18<sup>th</sup> December 1991. The defendant was then an adult. Frankly he ought to have ventured for his land as an adult. I don't find this argument therefore plausible. The defendant father has advised him to go to Nakuru since he has purchased another land and I don't with respect see any contradiction. He should pursue where his family is. The defendant has further argued that he has obtained the ownership and usage of the suit land by way of adverse possession. Although this may be the case, the defendant has not brought himself within the requirements of claiming the suit property in such a style. He should instead file an originating summons. Worse still he has not filed any counter claim in this suit.

The arguments that the land Control Board was never attended has not been backed with any tangible evidence by the defence. The relevant board should have been called to testify on the veracity or otherwise of the document produced by the plaintiff in support of her cases.

Having read the submission by both counsels for the plaintiff and the defendant I am incline to grant the plaintiffs wishes. For the above reason the plaintiff suit is allowed as prayed with costs. I shall however allow the defendant forty-five (45) days from the date of reading of this judgment to vacate the suit land, namely **KISUMU/FORT TERNAN 68/434**

Orders accordingly.

**Dated, signed and delivered at Kisumu this 10<sup>th</sup> day of November 2011.**

**H. K. CHEMITEI**  
**JUDGE**

*HKC/aao*