



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Suit 140 of 2009
THE PRESBYTERIAN FOUNDATION (suing for and on Behalf of
P.C.E.A Ayub Kinyua Parish):.....PLAINTIFF
VERSUS
JOHN EKAI ACHIVIHA & 10 OTHERS:.....DEFENDANTS

JUDGMENT

The Plaintiff has filed suit against the eleven Defendants for orders of a permanent injunction restraining the Defendants by themselves or their servants, agents or otherwise howsoever from remaining on or continuing occupation of the suit property. The Plaintiff also prays for an order for the eviction of the Defendants from the suit land and for vacant possession thereof. There are sought further orders for general damages for trespass and that the police Eldoret Police Station do effect the eviction order and costs of the suit.

Though served with summons to enter appearance none of the Defendants entered Appearance and none filed a defence. Judgment in default of entering appearance and filing a defence was entered on 25/09/2009 in favour of the Plaintiff as prayed in the plaint. At the Formal Proof hearing of the suit the outgoing Session Clerk of Ayub Kinyua Parish, for whom the suit land is reserved, one Julius Muchiri Manuthu gave evidence on behalf of the Plaintiff. He stated that the suit land belongs to the Plaintiff and the Plaintiff has a title to the land being certificate of Lease issued under the Registered Land Act cap.300 of the Laws of Kenya in the name of the Presbyterian Foundation (Reserved for P.C.E.A Ayub Kinyua Parish). He produced a certified copy of the original certificate of lease and said that the original of the same was in the custody of the Presbyterian Foundation the body in the PCEA Church vested with power to keep in safe custody original title Documents. The land was registered in February 2003.

He produced a copy of the Agreement of sale in which he was a signatory showing that the Plaintiff purchased the land from John Songok and David Serem. He also produced in evidence the Official Search in respect of the suit land which shows that the suit land is registered in the name of the Plaintiff. His further evidence was that they bought the land with vacant possession but that during the year 2000 some quarters started trespassing onto the suit land and covered in occupation about one acre of the same leaving the other acre vacant. These squatters erected temporary structures on the suit land and all attempts by the Plaintiff through the Provincial Administration to evict the quarters who are named as the Defendants herein have totally failed and hence this suit, praying as in the plaint. In a brief submission learned counsel for the Plaintiff reiterated the witness's evidence and prayed as in the plaint.

The Plaintiff has succeeded in proving that the suit land is registered in its name. That the land was bought with vacant possession was not challenged. I find therefore that the Plaintiff was and still is the registered owner of the suit land and as such it entitled to peaceful occupation of the same to the exclusion of the Defendants. No evidence was led as to the

general damages incurred and there were no submissions on the same. The claim under general damages does therefore not succeed. Taking all the pleadings and evidence adduced in totality I find that the Plaintiff succeeds and I grant orders in terms of a permanent injunction and issuing restraining the Defendants by themselves and their servants and agents from remaining on the suit land. I order that the Defendants be evicted from the suit land and the officer commanding Eldoret Police Station do effect the eviction order. The costs of the suit together with interest thereon at court rates from the date of this judgment upto the date of eviction of the Defendants from the suit land are awarded to the Plaintiff.

DATED AND DELIVERED AT ELDORET THIS 31st DAY OF MARCH, 2010

**P.M.MWILU
JUDGE**

IN THE PRESENCE OF:-

Andrew Omwenga - Court Clerk

Mr. R.M. Mutitu Advocate for the Plaintiff