

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE

Civil Case 50 of 2006

KIPNG'OK K CHEMITAN.....PLAINTIFF

VERSUS

JOSEPH WABOMBA WANYAMADEFENDANT

JUDGMENT

By a plaint dated 4th April, 2006, the plaintiff herein, Kipngok K Chemitan, sued the defendant herein Joseph Wabomba Wanyama.

The plaintiff sought judgment against the defendant for:

1. An order that the defendant do move out of plot No. 50 Kapkoi Settlement Scheme failing which he be evicted therefrom,
2. Costs,
3. Interest.

The plaintiff's cause of action is embodied in paragraph 3 – 7 of the plaint.

The defendant was served with Summons to Enter Appearance but failed to enter appearance or file defence within the time prescribed by the law. On application the plaintiff sought leave of the court to formally prove his case. The plaintiff testified on oath that he is the sole owner of plot No. 50 in Kapkoi Settlement Scheme measuring 5 acres. That he bought the same from the Settlement Funds Trustee at Kshs. 15,000/-. In support of his claim he produced official receipt No. 0580848 dated 27th May, 2004 issued under the hand of the District Land Adjudication/settlement Officer Trans-Nzoia District as Exh P 1. Subsequently he was issued with a clearance letter dated 28th January, 2008 which he tendered as Exhibit P 2. Last but not least, he was issued with a title deed in respect of the suit land on 30th March, 2009 which he tendered in evidence as exhibit P 3.

In the premises, it was the plaintiff's case that he thereby acquired absolute proprietorship of the suit land.

By reason of the foregoing matters when the defendant forcibly entered into and occupied part of the suit land and remained thereat without his consent, the defendant's acts constitutes an act of trespass. Hence the defendant's prayer that he be evicted therefrom.

I have carefully weighed and considered the evidence adduced by the plaintiff. In the absence of evidence to the contrary in rebuttal from the defendant, I find and hold that the plaintiff has proved his case against the defendant on a balance of probability.

Accordingly, there shall be orders in terms of prayer (a) (b) and (c) of the plaint.

Dated and delivered at Kitale this 3rd day of March, 2010

N R O OMBIJA

JUDGE.

Mr. Njoroge for Chebii: for plaintiff