

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Civil Case 85 of 2005

SIMON SERETE LUSEKO PLAINTIFF

V E R S U S

NATILI MWANJE 1ST DEFENDANT

PIUS ABUNGANA SHITANDI 2ND DEFENDANT

J U D G E M E N T

The plaintiff filed this suit seeking an order of eviction against the defendants, their agents, family or anyone claiming on their behalf from plot number **SOUTH KABRAS/CHESERO/1694**. The case proceeded ex-parte as the defendants and their Advocates were absent during the hearing.

The plaintiff's testimony is that he bought the suit land on 2nd December, 1994. Initially the plot was **SOUTH KABRAS/CHESERO/589** and after sub-division was done his plot was registered as plot No. **SOUTH KABRAS/CHESERO/1694** measuring 0.7 Hectares. The plaintiff produced the title deed for the suit property and an official search dated 26th February, 2008.

The plaintiff further testified that the defendants caused to have him charged in Kakamega Criminal Case Number 258 of 2001 but he was acquitted. In 1999 he discovered that the 2nd defendant was encroaching on his land and the 1st defendant claimed to have sold the land to the 2nd defendant. He urged the court to order the removal of the caution placed on his land and eviction of the defendants. The plaintiff also prayed for costs.

The official search shows that the plaintiff was registered as the owner of plot number **S. KABRAS/CHESERO/1694** on 22nd September, 1997 and he was issued with a title deed on the same date. On 18th December, 2000 the 1st defendant registered a caution claiming licensee interest. The title deed produced indicates that the plaintiff is the lawful owner of the suit property and I do find that he has established his case against the defendants. I do order that the caution registered against the suit property on 18th December, 2000 be removed. An order of eviction is hereby granted against the defendants, their agents or anyone claiming on their behalf from plot number **S.KABRAS/CHESERO/1694** and the defendants are hereby restrained from ever entering, utilizing or in any other manner dealing with the

suit property. The plaintiff is granted costs of this suit.

SAID J. CHITEMBWE

J U D G E

Delivered, dated and countersigned at Kakamega by the Hon. Justice Isaac Lenaola this

15th day of April, 2010

ISAAC LENAOLA

J U D G E