



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CIVIL SUIT NO. 41 OF 2008

JOHN KIPTORUS KILELPLAINTIFF

VERSUS

OMAR JUMA 1ST DEFENDANT
SARAH SHEIKDON 2ND DEFENDANT
MARY ACHIENG 3RD DEFENDANT
JOSHUA LANGAT 4TH DEFENDANT
NANCY TOO 5TH DEFENDANT
RUTH BIOMDO 6TH DEFENDANT
AGNESS WANJIRU 7TH DEFENDANT

JUDGMENT

The Plaintiff, **JOHN KIPTORUS KILEL**, filed this suit on 8th October, 2008 seeking orders for eviction of the seven defendants, namely Messrs OMAR JUMA, SARAH SHEIKDON, MARY ACHIENG, JOSHUA LANGAT, NANCY TOO, RUTH BIOMDO, AGNESS WANJIRU from his land title No. Kericho Plot 631/673.

The Defendants were served with summons to enter appearance. They entered appearance on 21st January, 2009 through their advocates, Messrs J.K. Kirui & Company. However, no defence was ever filed. The suit came up for hearing before me on 30th June, 2010. The Plaintiff testified. He told the Court in his testimony that from 1st August, 1985 he became the proprietor as lessee of the piece of land situated in Kericho Municipality known as L.R. 631/1673 measuring in area 0.0658 of a hectare. He produced in evidence as exhibit No. PIA the original Grant from the President of the Republic of Kenya together with the Deed Plan of the plot. He further testified that he does pay rates for the plot and produced a receipt in this regard in his evidence as exhibit No. P2.

It was the Plaintiff's evidence that the Defendants had entered the said Plot of land and had built kiosks which they had given out to tenants who paid them rent. By a letter dated 11th August, 2008, the Plaintiff's advocates, E.M. Orina & Company wrote to the Defendants giving them notice to vacate the said plot failing which legal action would ensue. As the defendants did not vacate and/or remove their kiosks from the said plot of land, the Plaintiff brought this action. He prayed for eviction of the Defendants from the said plot and vacant possession, mesne profits and costs. He contended that he was disabled from making any economic use of the said plot and continued to suffer loss and damage as he was enjoined to pay rates as he did.

Mr. J.K. Kirui, learned counsel for the Defendants, cross-examined the Plaintiff but as he had not filed defence on behalf of the Defendants, he was not able to call evidence. In the evidence in cross-examination, the plaintiff told the court that he became aware that the Defendants had moved onto and were trespassing on the said plot before he filed suit. In paragraph 4 of the Plaintiff, the Plaintiff has pleaded that the Defendants trespassed onto the plot in 1997, about 11 years before the Plaintiff filed this suit. But it was not until 2008 that he threatened action and filed suit. The limitation of time for recovery of land is

twelve (12) years under the **Limitation of Actions Act, Cap 22**. The Plaintiff was lucky the period of limitation had not run out before he brought action against the Defendants.

The Defendants offered no evidence and they were not entitled to do so as they never filed defence after entering appearance. Consequently, the evidence adduced by the Plaintiff remained unchallenged and uncontraverted.

It is my finding that the Plaintiff has established on the balance of probabilities that he is the proprietor as lessee of the said plot. It is also my finding that the Plaintiff has established that the Defendants have trespassed on the said plot and that they have refused to vacate even after due notice to them to do so. I am satisfied that there is no justification for the trespass. I hold that the Plaintiff is entitled to the relief he seeks. Accordingly, I enter judgment in favour of the Plaintiff and against the Defendants jointly and severally. I also order eviction within thirty (30) days of the Defendants, their agents, servants and/or employees and/or persons claiming through them from the parcel of land known as Kericho Municipality LR NO. 631/1673. I award costs of this suit to the Plaintiff. As no evidence was adduced in respect of mesne profits, I make no orders with regard to mesne profits.

DATED at KERICHO this 28th day of July 2010

G.B.M. KARIUKI, SC

RESIDENT JUDGE

COUNSEL APPEARING

Mr. E.M. Orina of Orina & Co. Advocates appeared for the Plaintiff.

Mr. J.K. Kirui of Kirui & Co. Advocates appeared for the 3rd, 4th and 5th Defendant

No appearance for the 1st, 2nd, 6th and 7th Defendants