



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

Civil Case 80 of 2007

PERIS OSENGO OYOKO:::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

JAMES AMBULA OYOKO:::::::::::::::::::::::::::::::::DEFENDANT

J U D G M E N T

By a plaint dated 11th May, 2007 the plaintiff sought orders:-

- (a) A declaration that the parcel No. Kakamega/Kongoni/2017 measuring 11.73 hectares solely belongs to the plaintiff.
- (b) An order of eviction of the defendant from parcel No. Kakamega/Kongoni/20067.
- (c) An order that the defendant be ordered to move to the farm at Bunyore.
- (d) Costs
- (e) Any other relief the honourable court may deem fit to grant.

The plaintiff testified, on oath, that she is the proprietor of land parcel Kakamega/Kongoni/2017 measuring 11.73 hectares or thereabouts. That she does not hold it in trust for any person including the defendant.

That the defendant has without any colour of right, authority and/or consent resorted to selling piecemeal parts of the subject parcel to third parties. Such acts constitute fraud and obtaining by false pretence.

It is the plaintiff's case that the defendant has absolutely no proprietary rights over the subject land which he could pass over to the said third parties - **Nemo dat qui non habet**. As evidence of ownership she produced a title deed for the subject parcel exhibited as P1. In further support of her claim she produced a green card issued by the Land Registrar exhibited as P2.

It was her last and final position that notwithstanding her proprietary interest the defendant filed Eldoret CMCC No. 104/2007 - James Ambula Oyoko –vs- Peris Osengo Oyoko - to vex the plaintiff. She thus prayed for an order of eviction.

On the evidence, I find as a matter of law that the defendant has no proprietary interest in the subject parcel. In deed he is a licensee of the plaintiff. Further the defendant's acts constitute acts of fraud, theft and nuisance as against the plaintiff.

In the result, I find as a matter of law that the plaintiff has proved her case against the defendant on a balance of probability. Accordingly there shall be orders:

(a) Of eviction from land parcel No. Kakamega/Kongoni/20067.

(b) Of costs

(c) Of interest at court rates.

It is so ordered.

Dated and delivered at Kitale this 25th day of MAY 2009.

N.R.O. OMBIJA

JUDGE