

REPUBLIC OF KENYA

IN THE HIGH COURT

AT KAKAMEGA

Civil Case 96 of 2005

ENOS MATAKWE SIKOYOPLAINTIFF

V E R S U S

ISMAEL SAKWA DEFENDANT

J U D G E M E N T

The plaintiff sued the defendant claiming that the defendant unlawfully trespassed onto part of his land parcel No. **EAST WANGA/MUNG'ANG'A/1144**. The plaintiff is seeking eviction orders against the defendant from the suit property and a permanent injunction restraining the defendant or his agents from trespassing on the suit land.

The plaintiff testified that he bought the suit property on 1st March, 2005 from one Ibrahim Shitandi Bongita for KShs.157,000/=. The Land Control Board issued its consent to transfer the property into the plaintiff's name. Parties signed a Sale Agreement. He visited the plot and found sugar cane and a house. The previous sugar cane contract with Mumias Sugar Company Ltd. was in the vendors name but has now been changed into his name.

The plaintiff further testified that he has planted sugar cane on the plot. He produced the title deed and the Sale Agreement as proof of his claim. The plaintiff also produced an extract from Kakamega Land Registry (Green Card) as proof of his contention. He urged the court to stop the defendant from using the land and that the defendant be evicted from the suit property.

PW2, IBRAHIM OBONGITA SHITANDI testified that he is the one who sold the land to the plaintiff. He informed the court that parties signed a Sale agreement on 1st of March, 2005. He had a sugar cane contract with Mumias Sugar Co. Ltd. He informed the court that he does not know the defendant, Ismael Sakwa and that he never sold the plot to the defendant. According to PW2, the property belongs to the plaintiff.

The title deed produced shows that the plaintiff is the registered owner of the suit property. The property measures approximately 0.93 Hectares and a title deed was issued to the plaintiff on 14th June, 2005. The extract from the registry show that the property was initially registered in the name of one **NOAH SHITABULE**. On 17th June, 2004 it was transferred to **PW2, IBRAHIM O. SHITANDI**. On 14th June, 2005 the property was transferred to **MATANGWE SIKOYO ENOS**, the plaintiff, at a consideration of KShs.180,000/=.

The defendant was served but did not attend court and the matter proceeded ex-parte. From the evidence adduced,

I am satisfied that the plaintiff has proved his case against the defendant. The plaintiff is the registered owner of the property and is also utilizing the property. The plaintiff is entitled to exclusive and peaceful enjoyment of the property.

Eviction order is hereby issued against the defendant, relatives, servants or agents to be evicted from plot No. E. **WANGA/MUNG'ANG'A/1144**. The defendant is hereby restrained from laying claim to, trespassing onto, utilizing, developing or in any other manner dealing with and or interfering with the plaintiff's ownership; possession and or use of the plot No. E. **WANGA/MUNG'ANG'A/1144**. The defendant shall meet the plaintiff's costs.

Delivered, Dated and Signed at Kakamega this 12th day of November, 2009

SAID CHITEMBWE

J U D G E