

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 4 of 2005

JAPHETH KIPTOON.....1ST PLAINTIFF

JOSHUA KIPTOON.....2ND PLAINTIFF

VERSUS

BARNABAS EDWIN OTIENO DULLO.....1ST DEFENDANT

P/S MINISTRY OF ROADS & PUBLIC WORKS... 2ND DEFENDANT

HON. ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

The plaintiffs, Japheth Kiptoon and Joshua Kiptoon, claim in their plaint that they are the registered owners of all that piece of land situate in Nakuru Municipality and known as title number Nakuru/Municipality Block 5/145. In March 2004 the first defendant wrongfully entered upon the property and evicted their tenant and took possession of the same. As a result of that act the plaintiffs have been losing rent of Kshs.10,500/- per month. Notwithstanding demand the defendants have not given possession of the premises to them hence this suit. They pray for a declaration that they are the owners of the property entitled to possession of it, an order to evict the defendants, an injunction to restrain the defendants, their servants and/or agents from remaining or continuing in occupation of the said property, mesne profits from 1st of March 2004 to the date of delivery of judgment and costs of this suit.

The first defendant though served did not enter appearance or file a defence and interlocutory judgment was accordingly entered against him. The second and third defendants however, entered appearance and filed a joint statement of defence in which they denied the plaintiffs' ownership of the suit property and said that the property belongs to the Government and that the first defendant being a civil servant is legally in occupation of it. In the alternative they averred that if the plaintiffs are the registered owners of the property, then they obtained it illegally and/or fraudulently.

When the suit came for hearing before me on the 9th April 2008, the second and third defendants were not in court and were not represented. After perusing the return of the affidavit of service I was satisfied that they had been served and I therefore allowed the plaintiffs to proceed ex-parte.

The second plaintiff, Joshua Chebor Kiptoon testified on his own behalf and on behalf of the first plaintiff. He testified and produced a copy of a sale agreement showing they bought the suit property from one Martha Ocherop Juma on the 13th January 1997 for Kshs.1,200,000/-. After paying that sum they took possession of the property and leased it out. He also produced copies of the title deed, green card and certificate of official search showing that the property is indeed registered in their names.

In early March 2004, while in Nairobi he received information that someone had evicted their tenant from

the property. He came down and went to the property and found somebody he did not know. Upon inquiry that person was very rude to him. He later found out that his name was Barnabas Edwin Otieno Dullo who worked for the Ministry of Roads and Public Works. On failure to receive a satisfactory response to their advocate's demand letter they filed this suit. He therefore prayed for a declaration that they are the owners of the property and an order to evict the defendants from the property as well as mesne profits, costs and interest.

As I said the first defendant did not enter appearance nor file a defence and the second and third defendants did not come to court during the hearing of the case. The second plaintiff's evidence therefore remains uncontroverted. Having considered it, I am satisfied that the plaintiffs bought the suit property in 1997 for Kshs.1,200,000/-. As is clear from the green card **exhibit 3**, before the plaintiffs purchased the property it was on 13th September 1994 registered in the name of Martha Ocherop Juma and she was issued with a certificate of lease. Upon sale it was on 28th January 1997 transferred to the plaintiffs. The certificate of official search **Exh.4** shows that the property is still registered in the names of the plaintiffs. There is therefore nothing on record to show that the property belongs to the Government.

The second plaintiff also produced a schedule of payments of rent **Exh.5** which shows that from February 1997 to December 1999, the tenant prayed the plaintiffs rent of Kshs.3,000/- per month. From January 2000 to December 2002 the rent was Kshs.6,500/-. From January 2003 to the time of eviction the tenants used to pay them Kshs.10,500/-.

In the circumstances, and on the basis of this evidence, I accede to the plaintiffs' plea and declare that the plaintiffs are the registered proprietors of all that piece of land situate in Nakuru Municipality and known as title number Nakuru/Municipality Block 5/145 and they are entitled to possession thereof. The eviction of their tenant from the property was therefore unlawful. Consequently I order that an eviction order do issue to evict the first defendant and/or his family or anybody claiming under him from the suit property. I also order that the defendants do pay the plaintiffs mesne profits at the rate of Kshs.10,500/- per month with interest thereon at court rates from March 2004 until payment in full and final settlement is made. The plaintiffs shall have costs of this suit together with interest thereon.

DATED and delivered this 11th day of April, 20008.

D. K. MARAGA

JUDGE