



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**Civil Suit 240 of 2001**

**SETH NYAWARE OMAMO.....PLAINTIFF**

**VERSUS**

**KITALE ELGON CO-OPERATIVE UNION LTD.....DEFENDANT**

**JUDGMENT**

The Plaintiff is the registered proprietor of all that parcel of land known as LR NO. 3024/6 comprised of 110 acres at Saboti in Kitale. On the farm stands a big house and the Plaintiff practiced mixed farming on his farm. He grew maize and coffee and he also kept dairy cattle. He needed money for his farming activities. He approached the Agriculture Finance Corporation for a loan in 1982. He was granted a loan of Kshs.780,000/= part of which included the purchase price of the farm. The Plaintiff defaulted in repayment of his loan and the Agriculture finance Corporation exercising its right of sale caused the farm to be sold by public auction on 1<sup>st</sup> December 1987 to recover the loan. The farm which the Plaintiff had bought for Sh.1.2 million in 1981 after having been advertised for sale was sold at public auction for Sh.1,410,000/=.

The highest bidder was the Defendant, the Kitale Elgon Co-operative Union Ltd. Immediately after the sale but before the farm was transferred to the union, through its servants moved in took possession and forcefully ejected the Plaintiff and his family from the farm.

The Plaintiff successfully challenged the sale in **HCCC NO.1412 OF 1988** Ex.2 Judgment was delivered on 31<sup>st</sup> July 1990. The court declared that the sale was unlawful and it was ordered:-

1. That the auction sale conducted on 1<sup>st</sup> December 1987 whereof the farm of the Plaintiff LR NO. 3024/6 was sold is void for all purposes and neither the union nor Pkures Farm have a right to be there.
2. That the Plaintiff is the registered owner of the Farm and the loan charged thereof is not extinguished.
3. That general damages assessed at Shs.150,000/= be paid to the Plaintiff by the Kitale Elgon – Co-operative Union Limited with costs and interest thereof.

The Defendant appealed to the Court of Appeal against the decision of the High Court and the Appeal was struck out with costs Ex.4.

The Plaintiff successfully applied for eviction and it was ordered:-

1. That the Defendants, their servants, agents and or employees do vacate the suit property LR NO.

3024/6.

2. That the District Officer and the OCPD Kitale do supervise and enforce the vacation order.
3. That costs be to the applicant.

Despite this eviction order, the Defendants refused to give vacant possession and are still in occupation for now 18 years.

The Plaintiff filed this suit against the Defendant seeking judgment for:

- (a) Mesne profits, loss of use of the suit property and damages of waste of the suit property.
- (b) Loss of income and housing.
- (c) Any other relief that this Honourable Court may deem fit to grant together with costs and benefits.

The Plaintiff had 20 acres under coffee and the rest was utilized for maize and dairy cattle. He engaged KWALITY PROPERTY CONSUSLTANTS a firm of Valuers who assessed rental value of the Farm House at Shs.20,000/= per month Ext.6 and rental value of the farm including the coffee but excluding the Farm House at Shs.4,500/= per acre per annum.

The total rental value for the Farm House at the rent of Shs.20,000/= per month for 18 years was calculated at Shs.4,320,000/= while the total rental value for the farm excluding 2 acres reserved for the house at Shs.4,500/= per acre per annum was calculated at Shs.8,748,000/=. There shall be judgment for the Plaintiff for Shs.13,068,000/= with costs and interest.

Dated and delivered at Nairobi this 8<sup>th</sup> day of May, 2007

**J.L.A. OSIEMO**

**JUDGE**