

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
Civil Suit 89 of 2003

MICHAEL SIMIYU SIBA.....PLANTIFF

VS

ABSOLOM W. MUKHWANA.....DEFENDANT

J U D G M E N T

This suit proceeded for hearing by way of formal proof after interlocutory Judgment was entered in default of appearance. By a plaint dated 14th November 2003, Michael Simiyu Siba, the plaintiff herein, sought for the eviction of Absolom Waliaula Mukhwana, the defendant in this matter, from the parcel of Land known as L.R. No. KIMILILI/ SIKHENDU/705 hereinafter referred to as the suit premises. The plaintiff also prayed for costs plus interest.

The plaintiff testified without summoning independent witnesses in support of his action. He told this court that he purchased the suit premises in 1965 from one Masai Chesititi who put him into occupation. He further informed this court that he acquired title to the suit premises on 9th day of January 2002. He produced the title deed as an exhibit in evidence to prove that ownership of the suit land had passed to him. The plaintiff also produced a certificate of official search dated 3rd March 2004 as an exhibit in evidence to show the particulars of the register.

The plaintiff further told this court that the defendant unlawfully and without any colour of right forcefully entered into the suit premises without his permission in 1987 and he has continued to stay therein despite several demands. He went further to aver that the defendant even erected structures on the suit land.

The plaintiff produced a demand letter as an exhibit in evidence to show that he gave the defendant a formal notice to vacate the suit premises upon obtaining proprietary rights.

From the evidence presented to this court the following two issues arose for my decision. The first issue is whether the plaintiff has established proprietary interest and the second issue is whether the plaintiff is entitled to the prayers sought for in the plaint.

To begin with, the plaintiff has produced a title deed and a certificate of official search in evidence. These two documents show that the suit premises is registered in the name of the plaintiff. It is therefore right at this juncture to state that the plaintiff has established he has the proprietary interest over the suit premises. His proprietary interest were registered on 9th January 2002. He acquired absolute interest and hence the right to sue. The defendant continued being on the suit premises even after the plaintiff acquired legal rights defined under the Registered land Act (Cap 300 Laws of Kenya). The defendant's act is a continuing trespass which persisted after the plaintiff acquired proprietary interest and right to sue.

In view of the fact that the plaintiff has proved his proprietary rights then he is obviously entitled to the prayers he prayed for in the plaint. His legal right to sue accrued the moment he acquired the title deed. The defendant has not challenged nor resisted the plaintiff's claim.

In conclusion, I am satisfied that the plaintiff has proved his case on a balance of probabilities. The defendant should be evicted from the suit premises as prayed in the plaint. Costs is also given to the plaintiff.

DATED AND DELIVERED THIS 28th DAY OF January 2005

J.K. SERGON

J U D G E