

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
HCCC NO. 419 OF 1999

REMJUS ROAD OJAMBO.....PLAINTIFF

VERSUS

SONY OUTGROWERSDEFENDANT

JUDGMENT

Remjus Roa Ojiambo alias Roa Ojiambo suing through his attorney James Odoyo the plaintiff brought this suit against Sony Outgrowers Company Ltd, the defendant, seeking:- (a) a declaration that he is the legal and the registered proprietor of the land Parcel NO. South Sakwa/Waware/931, (b) for an order of injunction to restrain the defendant from trespassing onto or in anyway interfering with the plaintiff's ownership and possession of parcel No. South Sakwa/Waware/931 (c) for an order of eviction of the defendant from the said parcel of land No. South Sakwa/Waware/929 and , (d) general damages. In his plaint the plaintiff averred that at all material times the plaintiff was the registered proprietor of parcel of land No. South Sakwa/Waware/153 measuring 2.2 hectares but in 1976 the Government of Kenya compulsorily acquired 2.2 hectares of the said parcel of land leaving 0.20 hectares to the plaintiff. The plaintiff further averred that that portion of land comprising 0.20 hectares was registered as No. South Sakwa/Waware/931 but in 1994 the defendant wrongfully trespassed onto it and fenced it off depriving the plaintiff of its use, occupation and possession, and prompting him to file this suit.

The defendant filed a defence in which it averred that the parcel land No. South Sakwa/Waware/153 was fully acquired by the Government of Kenya and subsequently surrendered its interest to the defendant who took possession of the whole of it. The defendant further averred that the plaintiff secretly and unlawfully acquired title to parcel of land No. South Sakwa/Waware/931 which was curved out of parcel No. South Sakwa/Waware/153. The defendant further averred that the plaintiff is guilty of laches.

Eventually when the case came up for hearing the plaintiff through his attorney testified and called two witnesses.

In his testimony James Matu Odoyo who had been authorized to conduct this case by the plaintiff who is blind said that the plaintiff was the registered proprietor of the whole of parcel of land No. South Sakwa/Waware/153 comprising 2.4 hectares until 1976 when the Kenya Government through Gazette notice No. 2996 of 8/10/76 compulsorily acquired 2.2 hectares of the land leaving 0.20 hectares to the plaintiff . He further claimed that later on the plaintiff was issued with title deed for the said portion of 0.20 hectares which was registered as South Sakwa/Waware/931 after the Land Registrar and the District Surveyor had confirmed that that was the correct position. However the defendant is said to have trespassed onto the said parcel of land since 1994 and the plaintiff has been kept out of his property.

There is no evidence before me to challenge what the plaintiff and his witnesses adduced. I therefore order that the defendant is directed to vacate the plaintiff's property within 30 days from to-day's date. In default eviction order to issue.

The plaintiff also sought general damages for loss of user of his parcel of land. The plot is 0.20 of an hectare which is slightly less than ½ an acre. The plaintiff is said to have been using the land for growing sugarcane to be sold to SONY factory . In 10 years the plaintiff would have harvested his cane 5 times. I assume that an acre of land under cane would yield 30 to 40 tons. I accept that the plaintiff's plot would have yielded 15 tons per ratoon and the price of sugar cane is about Kshs. 2,000/- a ton. The loss the plaintiff sustained in a period is Kshs. 2000 per ton x 15 tons of ½ acre per ratoon x 5 ratoons in 10 years = Kshs. 150,000/- as general damages for loss of user.

The plaintiff will also have the costs of this suit.

Dated and delivered this 25th day of June 2004 in the presence of Mr. Odunga for Oduk..

B.K. TANUI

JUDGE