

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CIVIL CASE NO. 24 OF 2004

JEREMIAH O. SAMBA PLAINTIFF

VERSUS

SAMSON OSANO OCHI DEFENDANT.

JUDGMENT

The plaintiff's claim against the defendant is for eviction from land parcel No.Nyamira/Nyansiongo Settlement Scheme/220. He also prays mesne profits. Costs of suit and interest.

The defendant did not file memo of appearance nor did he file a defence. Interlocutory judgment was entered and case proceeds for formal proof. Plaintiff who is an Advocate told court that on 9/4/98 he purchased the land in question in a public auction. Apparently defendant had obtained a loan from National Bank and defaulted in payment. The bank then instructed Betico Auctioneers to sell the land which had been charged to secure the loan. The auction was a public case and the plaintiff was declared the highest bidder with a bid of shs.400, 000/=.

He paid shs.100, 000/= being 25% down payment. After that the defendant filed KISII CM CC.NO. 256 OF 1998. He got orders of injunction. Subsequently the suit was dismissed. On www.kenyalaw.org 13/2/02 he paid the balance of the Purchase Price to the bank. The bank executed all the necessary documents and the land was registered in his name on 20/3/04. He was issued with title deed. The defendant was however still in occupation of the land. Bank wrote to him on 19/5/03 asking him to vacate the land. He however has refused to do so. He has two tenants on the land. They cultivate on the land.

He told court if he was cultivating the land he would get about 60 bags of maize in a year. A bag of maize goes for shs.1000/=.

As said defendant did not file a defence. There is no doubt that the plaintiff properly purchased the land. I therefore enter judgment in his favour as prayed. The defendant, his agents, and or servants should vacate the land within 30 days failing which they should be evicted.

I also award the plaintiff shs.60, 000/= mesne profits for one year. He too will have costs and interest from today's date.

Dated on 10th November 2004

KABURU BAUNI

JUDGE.

10/11/04

Mr. Kerosi for the Plaintiff.

KABURU BAUNI

JUDGE