



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MAKUENI

ELC NO. 78 OF 2019

STEPHEN MAKAU NDETO.....PLAINTIFF

VERSUS

STEPHEN KILEI MULEI.....DEFENDANT

JUDGEMENT

1. The Plaintiff filed this suit on the 28th October, 2019 vide the Plaint dated 2nd October, 2019. He prays for judgement against the Defendants for:-

- a) An eviction and/or demolition order against the Defendant and/or his parties representative therein from land parcel No. 390 Kiboko 'B' Settlement Scheme to be supervised by the OCS Makindu Police Station.**
- b) General damages.**
- c) Cost of the suit and interest.**
- d) Any other relief that this Honourable court deems fit to grant.**

2. The matter proceeded as undefended suit after the Defendant who was served on 18th September, 2020 with summons to enter appearance and to file his defence failed to do so. The Plaintiff filed an affidavit of service on 1st October, 2020 the same having sworn at Makueni on 18th September, 2020.

3. During the hearing of the Plaintiff's case on 20th January, 2021, the Plaintiff adopted the statement that he recorded on 2nd October, 2019 as his evidence in chief.

4. His evidence was that the plot in dispute is 390 Kiboko 'B' settlement scheme. He went on to say that he had documents to prove ownership of the plot which include acceptance letter, a letter of offer, a letter by the D.O. dated 1st August, 2008, and a copy of judgement in Makindu Civil Suit No. 73 of 2009. He produced the said documents as PEX Nos. 1, 2, 3, 4(a) and (b), and 5 respectively.

5. The sum total of the evidence on record is that the Plaintiff is the owner of the land parcel number 390 Kiboko 'B' settlement scheme. There is no evidence to challenge the Plaintiffs letter of offer (PEX No. 2), letter of acceptance (PEX NO. 2) and receipts (PEX 3) that were issued to the Plaintiff upon payment of the requisite fees required of him by the Director of Land Adjudication and Settlement.

6. There is also a judgement (PEX No. 5) in Makindu Principal Magistrates Court Civil Suit No. 73 of 2009 (PEX No. 5) wherein the lower court ruled in favour of the Plaintiff. There is no evidence of the said judgement having been overturned on appeal and as such, it remains a judgement of a court of competent jurisdiction.

7. The above being the case, the Defendant has no right to be in the Plaintiff's land. He is a trespasser. Trespass is actionable per se. In the case of **Duncan Nderito Ndegwa –Vs- KPLC LTD & Another [2013] eKLR** P. Nyamweya, J. held: -

“.....once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary for the court to award general damages. This court accordingly awards an amount of Kshs. 100,000/= is compensation of the infringement of the Plaintiff's right to use and enjoy the suit property occasioned by the 1st and 2nd Defendants' trespass.”

8. In my judgement, therefore, I hold that the Plaintiff is similarly entitled to an award of Kshs. 100,000/= being damages for trespass.

9. Being satisfied that the Plaintiff has a cause of action against the Defendant, I hereby proceed to enter judgment in his favour and against the Defendant as hereunder: -

a) An eviction and/or demolition order against the Defendant and/or his parties representative therein from land parcel No. 390 Kiboko 'B' Settlement Scheme to be supervised by the OCS Makindu Police Station.

b) Kshs. 100,000/= being general damages.

c) Cost of the suit and interest.

Signed, dated and delivered via email at Makueni this **28th** day of **April, 2021**.

MBOGO C.G.

JUDGE

Court Assistant: Mr. G. Kwemboi.