

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 279 OF 2014

LABAN MASINJILA.....PLAINTIFF

VERSUS

SULUMAN SUMBA, MIN. FOR LANDS COUNTY MINISTRY OF LANDS

COUNTY GOVERNMENT OF KAKAMEGA.....DEFENDANTS

JUDGEMENT

The plaintiff avers that at all material times to this suit he is and was the owner of and entitled to the possession of Plot No. 1 Idakho/Shikulu market and its extension situated in Kakamega South District. The defendant has without any colour of right, consent and or authority of the plaintiff entered into the said plot and thereby trespassed and is still trespassing thereon and has interfered with his peaceful enjoyment of the said plot by fencing and has started constructing a toilet on the extension of the said plot. The defendant threatens and intends, unless restrained by this honourable court to continue to waste the said plot by constructing and being in wrongful occupation of the said plot and trespass thereon. The plaintiff has been deprived of the use and enjoyment of the said plot and has thereby suffered loss and damage. The plaintiff prays for judgment against the defendant for:-

1. A declaration that the plaintiff is the lawful owner of the said plot.
2. An order for vacant possession.
3. A permanent injunction restraining the defendant by himself, his servants and/or agents or otherwise howsoever from remaining on or continuing in occupation of the said plot.
4. Mesne profits.
5. Costs of this suit.

The defendants deny that they have without any colour of right, consent and/or authority of the plaintiff entered into the said plot and thereby trespassed and still trespassing thereon and interfered with his peaceful enjoyment of the said plot by fencing and constructing a toilet on the extension of the said plot. The defendants aver that the plaintiff is a mere licensee over the subject property which is public land held by the County Government of Kakamega in trust for the larger public. The defendants further aver that the 3rd defendant has the right to take over possession and use the subject property as it deems fit for the benefit of the larger public.

This court has considered the evidence and the submissions herein. PW1 the plaintiff testified that he was allocated plot 1A in 1960 and he developed it. He has been paying rent and rates for it. In 1973 he was given a permit to extend his business to plot 1B, PEx3. He then fenced the same. The defendant has without any colour of right, consent and or authority of the plaintiff entered into the said plot and thereby trespassed and is still trespassing thereon and has interfered with his peaceful enjoyment of the said plot by fencing and has started constructing a toilet on the extension of the said plot (PEx 5 are the photos). DW1, a County Surveyor produced the surveyor's report DEx1 and the map DEx2. The defence admits that the plaintiff was allocated plot 1A in 1960. He was allocated the extension in 1973 plot 1B with conditions that he was to develop the same within 12 months which he failed to do and the County repossessed the same. I have read the said extension permit and it is true that one of the conditions is that the same be developed within 12 months. The plaintiff stated he only fenced the portion. I find that he cannot now claim the same. Whether or not he paid rent or rates is not the issue here, the question is whether or no he fulfilled the condition for the extension of his plot. The plaintiff apart from putting up a fence never developed the said plot 1B, if he did then he never produced any evidence to establish the same. For these reasons I find that the plaintiff has failed to prove his case on a balance of probabilities and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED THIS 16TH DAY OF APRIL 2020.

N.A. MATHEKA

JUDGE