



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 103 OF 2013**

**MICHAEL KIPCHUMBA.....PLAINTIFF**

**VERSUS**

**FESTO ASANGO.....DEFENDANT**

**JUDGEMENT**

**INTRODUCTION**

1. The dispute in this case revolves around three plots which were allocated to three individuals by the county council of Nzoia (council) whose operations have since been taken over by the County Government of Trans-Nzoia. The plaintiff was allocated plot No.21, the defendant plot No. 3 and Ekuman Ekeno plot No.60. All the three plots were at Kapomboi Cypruss Trading Centre. The plot allocated to Ekuman Ekeno was residential whereas the other two were commercial.

2. The plaintiff later exchanged his plot with that of Ekuman Ekeno. The plaintiff took plot No. 60 and Ekuman Ekeno took plot No.21. The defendant later came and claimed that plot No.60 belonged to him.

He moved into plot No.60, demolished structures which the plaintiff had put up and erected his own structures prompting the plaintiff to file this suit against him.

3. During the hearing, neither the defendant nor his lawyer were in court despite the hearing date having been taken by consent. The hearing therefore proceeded ex-parte.

**PLAINTIFF'S CASE**

4. The plaintiff testified that he had been allocated plot No.21 by the council. He paid rent and rates to the council for some months. He later agreed to exchange his plot with one Ekuman Ekeno who had been allocated plot No.60. The two then surrendered their respective allotment letters in return for new ones reflecting the new position. The plaintiff then put up structures on his new plot. The defendant later came alleging that plot No.60 belonged to him. He demolished the plaintiff's structures and put up his own. The plaintiff has been asking him to move out of plot No.60 in vain.

**ANALYSIS OF EVIDENCE**

5. The plaintiff produced a letter dated 24.9.2007 which temporarily allocated him plot No.21 (exhibit 1). He also produced another letter of 24.9.2007 which allocated plot No.60 to Ekuman Ekeno. When he exchanged plot No.21 for plot No.60, he was issued with a fresh letter of allocation for plot No.60 on 23.1.2011 (exhibit 3) Mr. Ekuman Ekeno was also given a fresh letter for plot No.21 on 23.1.2011 (exhibit 4).

6. The plaintiff produced a bundle of receipts (exhibit 5) showing that he has been paying plot rent to the council and lately to the County Government of Trans-Nzoia who are the successors of the council. The plaintiff also produced a copy of receipt (exhibit 7) from the council showing that before the exchange, Ekuman Ekeno had been paying plot rent for plot No.60 and that after the exchange, he was now paying plot rent for plot No.21 (exhibit 8). An exchange agreement entered into on 7.10.2012 was produced as exhibit 9.

7. From the documents produced by the plaintiff, it is clear that plot No.60 now belongs to him. The evidence of the plaintiff was supported by the evidence of Ekuman Ekeno who testified in support of the plaintiff. Ekeno confirmed that he is still occupying plot No.21 which he had exchanged with the plaintiff.

8. Though the defendant did not testify, I have looked at the documents he filed in court. The documents indicate that he was allocated plot No.3 at Kapomboi Cyprus Trading Centre. He has been paying plot rent for plot No.3. I do not understand the basis upon which he is laying claim to plot No.60.

9. There are some correspondence filed by the defendant which seem to suggest that he is owner of plot No.60. These correspondence do not shed any light as to how a person allocated plot No.3 can again turn around and claim that his plot is No.60.

### **DECISION**

10. For the reasons given above, I find that the plaintiff has proved that he is the lawful owner of plot No.60. He has therefore proved his case against the defendant on a balance of probabilities. I allow his claim in terms of prayer (a) (b) and (c) of the plaint.

Dated, signed and delivered at Kitale on this 9th day of February,2016.

**E. OBAGA**

**JUDGE**

In the presence of Mr. Bororio for Mr. Chebii for plaintiff. Court Assistant – Isabellah.

**E. OBAGA**

**JUDGE**