

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA.

ENVIRONMENT AND LAND CASE NO. 88 OF 2016.

EXANT MBURU NG'ANG'APLAINTIFF

VERSUS.

KIBUI MASON.....DEFENDANT

JUDGMENT.

[1]. The Plaintiff has filed this suit praying for the eviction of the defendant from LR number S/Kabras/Chesero/70. The evidence of the plaintiff is that on 15/9/83 while passing the Kenya Commercial Bank Kakamega he found an auction going on. That the Auction was being conducted for and on behalf of a chargee M/s Kenya Commercial Bank. That sale was for S. Kabras/Chesero/70. He bid for the land for Kshs.4,000/= and was the highest bidder. He said that he was given a certificate of purchase by M/s Regent Auctioneers dated 13th September 1983. A copy was produced in Court.

[2]. On 16/9/83 he made an application for consent of the land control board for the consent of sale by chargee. A copy was produced in Court. The plaintiff said that on 16/9/83 a Letter of consent was issued pursuant to that application of 16/9/83. The consent was dated 25/11/83. That a transfer by chargee in exercise of power of sale for S. Kabras/Chesero/750 was signed by a bank official of M/s Kenya Commercial Bank. The plaintiff herein was issued with a land certificate for S/Kabras/Chesero/750 comprising of 1.60 hectares dated twenty third January 1974. A copy was produced in Court. The Plaintiff informs the court that he used the title as security in the Kenya Commercial Bank on 23/8/84 and borrowed Kshs.13,000/=. That after repaying the said amount, he borrowed Kshs.55,000/= using the said security which he has repaid. The Plaintiff says that the defendant has been living on the suit land since he purchased the land without any justification. That the defendant has refused to vacate even when asked to move out and vacate. He pleaded with the court to order an eviction against the defendant herein.

[3]. The defendant told the court that he comes from Kakamega North. He said that he was the owner of S. Kabras/Chesero/750. That he took a loan in 1974 of Kshs.20,000/= from Kenya Commercial Bank. He said that he did not repay the loan. That he had problems. That the bank sold the land. He stated that he was told the land was bought by the plaintiff. He said that he does not know the plaintiff and that he met him in Court.

I have no doubt that Land Parcel S. Kabras/Chesero/750 was bought by the plaintiff. It was sold by a Chargee exercising its statutory power of sale. Once it was sold the defendant was supposed to move out and vacate the land. He has persistently stayed on the land despite the fact that he was aware of the said sale and inspite of the plaintiff asking him to move out and vacate the said land. The defendant shall move out and vacate out of the said land within (45) Forty five days from the date hereof. He will remove all his houses and/or structures therein and move out. If he does not do so the plaintiff with the help of the Court bailiff and the police (nearest police station) will forcibly evict him and he shall be responsible for such costs of forcibly evicting him. However, if he moves out before the said period, each party shall bear their own costs. If he does not vacate and move out within the time stated, he will also pay the costs of the suit.

It is so ordered.

Judgment read in open court.

Dated, signed and delivered on 8th November, 2016.

S. MUKUNYA

JUDGE

In the presence of:

Court Assistant - Joy

The defendant - Present

Plaintiff - Not present