



No.35/2014

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
ELC CASE NO. 233 OF 2010
RICHARD LEDAMA RAPASI.....PLAINTIFF
VERSUS
CHEGE WARIGU.....DEFENDANT

J U D G M E N T

1. By a **Plaint** dated **5.11.2010** the Plaintiff prays for:

- a. An Order of eviction of the Defendant from the Plaintiff's piece of land.**
- b. Damages for illegal trespass, conversion and waste of the Plaintiff's piece of land.**
- c. Costs of the suit and interest at court rates from the date of filing of the suit until payment in full.**
- d. Any other relief that this Honourable Court deems fit and just to grant.**

2. The summons were served on 24.11.2010 and an affidavit of service sworn on 23.2.2011 was filed on 1.3.2011. The Defendant did not enter appearance or file Defence within the stipulated time. On 9.5.2012 the case was formally proved via Plaintiff Testimony and that of his witness. The Plaintiff testified that he is the owner of **Plot No.2/Business Ngong Gichagi Trading Centre**. The Plaintiff produced letters of allotment issued to him by Olkejuado County Council. He also produced receipt dated 22.3.2010 for KSh.14,090 being payment of land rent/rates payment thereof to prove ownership.

3. The Plaintiff further testified that despite the Defendant being asked to vacate the plot subject matter, the Defendant has neglected and/or refused to comply thus necessitating the filing of the instant suit. The Plaintiff produced a letter dated 7.4.2010 addressed to the Defendant requiring him to vacate the Plaintiff's Plot subject matter herein. The Plaintiff states that the Defendant has no justification to continue to occupy his (Plaintiff's) plot and therefore, seeks the prayers in the Plaintiff.

4. The Plaintiff called Onesmas Ndungu as his witness who narrated to the court how he knew the Defendant for a long time having grown up together in the same village. The witness narrated how he knows that the Plaintiff is the owner of the Plot suit property and how he informed Plaintiff of the

encroachment of the same by the Defendant. The witness testified that the Defendant was unable to produce any documents to demonstrate ownership of the plot when he was asked by the Olkejuado County Council to vacate the plot.

5. After going through the Plaintiff's testimony, his witness evidence and the pleadings, I find that the Plaintiff has proved his case on balance of probabilities that he is the lawful allottee of the Plot subject of this suit. The Defendant was given chance by the Olkejuado County Council to prove his interest over the plot but he failed to do so. He was also served with summons herein but he has opted not to defend the suit.

6. The court therefore makes a finding that the Plaintiff is entitled to the reliefs sought. However, the Plaintiff did not prove any damages sought in paragraphs **b** of the Plaint. The court therefore makes the following orders:

a. An order be and is hereby issued to evict the Defendant from Plot No.2/Business Ngong Gichagi Trading Centre.

b. Costs to the Plaintiff.

Signed and Delivered at Machakos, this 5th day of December, 2014.

CHARLES KARIUKI

JUDGE