

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL CASE NO. 56 OF 2012

BEN ISSA ISAVA..... PLAINTIFF

VERSUS

CHARLES WASWA

PETRONILA BARAKA WASWA

MIKE WASWA..... DEFENDANTS

JUDGEMENT

The plaintiff filed this suit seeking eviction of the defendants from land parcel No. E. Bukusu/W. Sangalo/3282. There is filed an affidavit of service which showed the defendants who are family members were served on 29th June 2012. They did not enter appearance. The plaintiff thereafter requested for interlocutory judgment which was endorsed on 6th September 2012. He subsequently set down the suit for hearing.

The plaintiff in his evidence stated that he purchased the suit land from a Mr. Robert Otinga. At the time of sale, the said Robert had not processed the title in his name. Robert took the plaintiff to the registered owner then of L.R. 1852 who is the 1st defendant. He produced the sale agreement as Ex. P.3 which indicates the 1st defendant was a witness to the transaction. The plaintiff also aver that at the time of sale the suit land was vacant. He then processed title documents of the sold portion into his name. He produced copies of title deed for L.R. 3282 and mutation form for L.R. 1852 as Ex. P 1 and 4 respectively. He also produced certificate of official search to confirm the land is registered in his name.

The plaintiff added that the defendants have denied him access and use of this land. He therefore prayed for eviction orders against the defendants and damages for the period they have stayed on the land. He closed his case. The plaintiffs counsel subsequently filed written submissions and quoted the case of **Julius Kiluye Meruaki vs. Peter Mwathimba [2005] e KLR** which has similar facts as in this case, except the authority is persuasive. The High Court found in favour of the plaintiff as the defendants had failed to file defence or adduce any evidence.

Like the case *supra*, the issue for determination is whether the plaintiff has proved its case on a balance of probabilities. The plaintiff has produced documentary evidence on how he acquired the land and has processed title in his name. The title deed was issued to the plaintiff on 15th May 2009. The registration bestowed on him the right to occupy and use the land (Sec. 25 of Land Registration Act). There is no evidence on the contrary why he should not have the opportunity to use this land. The rights of the 1st Defendant if any were extinguished immediately the change of ownership was effected.

I wish to point out that the pleadings referred to L.R. W. Sangalo/3282. Similarly documents also revealed the suit parcel as L.R. 3282. However the prayers in the plaint referred to L.R. E.Bukusu/W.Sangalo/ 3285. This is a minor error for which I will apply the slip rule (sec 100 Civil Procedure Act) and assume eviction order sought is in respect of L.R. E.Bukusu/W.Sangalo/3282.

Consequently I find the plaintiff has proved his case within the required standards of the law and allow prayer (a) of the plaint. In his evidence, he prayed also for compensation from the defendants for the period he has been denied access to the land. However he did not pray for damages in his plaint. The

law is you cannot be given what you have not prayed for. Neither did he explain the nature and extent of loss he has suffered. I find he is bound by his pleadings and he also did not prove loss to merit compensation. I will also not award him costs as there was no opposition to his case. The defendants are given 45 days to give vacant possession in default they be evicted.

JUDGMENT DATED, SIGNED and DELIVERED in open court this 5th day of November, 2013.

A. OMOLLO

JUDGE.