

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 113 OF 2016

PATRICK MBANYA.....PLAINTIFF

VERSUS

JAMES KINUTHIA MBUGUA....DEFENDANT

JUDGMENT

1. The hearing of this suit was delayed by the lodging of a number of petitions affecting the suit land among other parcels of land falling within **Block 7** and **Block 8** situate in Kitale Municipality, which petitions were consolidated and heard and determined under the banner of **Kitale ELC Petition No. 5 OF 2018 - Justice & Peace Center Kitale v National Land Commission & 3 others [2019] eKLR**. The decision in the consolidated petition was delivered on **29/5/2020**, and in this court's view it still binds and is applicable to the suit land in this case in so far as it is relevant to the suit land subject herein notwithstanding the contents of this judgment on the individual merits of the parties in this undefended case.

2. By a plaint dated **21/7/2016** and filed in court on **1/8/2016**, the plaintiff sought the following orders against the defendant:-

a. An order of eviction of the defendant from the plaintiff's property known as KITALE MUNICIPALITY BLOCK 7/363.

b. A permanent injunction restraining the defendant from entering, constructing upon the plaintiff parcel of land known as KITALE MUNICIPALITY BLOCK 7/363.

c. Costs of the suit.

The Plaintiff's Case

3. According to the plaint and the evidence of the plaintiff the plaintiff he purchased an unsurveyed **plot No. 21** from one **Peter Liaulo Olol Talam** the purported original allottee vide an allotment letter dated **28/9/1992**; that he then paid all the requisite payments to the Municipality of Kitale and the parcel was surveyed and allocated a new number being **Kitale Municipality Block 7 /363**; that a lease over the suit plot was granted to the said Peter Liaulo Olol Talam on **7/1/2014** and on **8/1/2014** the plaintiff was issued with a certificate of lease over the suit land. The plaintiff states that sometime in **January 2016** the defendant encroached upon the suit land and erected a perimeter wall, thus acting in trespass. On **31/5/2016** the plaintiff sought the services of the County Surveyor Trans Nzoia to visit the site and ascertain the beacons allegedly fixed in **2007** whereupon the attempts to verify the beacons were met with threats of violence from the defendant hence the suit. The plaintiff claims to have enjoyed quiet possession of the suit premises since **1998**.

4. Only the plaintiff testified in his case. He adopted his statement filed alongside his plaint He produced the original allotment as **P. Exhibit 1**, a transfer of lease as **P. Exhibit 2**, a certified copy of a Party Development plan as **P. Exhibit 3**, the original lease and certificate of lease as **P. Exhibit 5** and **P. Exhibit 6** respectively among other documents.

The Defendant's Defence

5. The defendant filed memorandum of appearance on **12/8/2016** and the defence on **25/8/2016**. However though served, the defendant and his advocates never attended the hearing, and it is trite that where there is no evidence given in support of a defence the suit is deemed as undefended and the statements in the defence, unsupported by any evidence are of no value in the suit at all.

DETERMINATION

6. I have considered the plaint and the evidence given by the plaintiff as well as the documents produced in this case. In this court's view, and subject to the introductory comments made in the first paragraph of this judgment, the plaintiff has established his case against the defendant on a balance of probabilities, and I grant him judgment against the defendant as prayed in **prayer Nos. (a) (b) and (c)** of the plaint dated **27/7/2016**.

Dated, signed and delivered at Kitale via electronic mail on this 17th day of December, 2020.

MWANGI NJORGE

JUDGE,

ELC,

KITALE.

