

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 104 OF 2014

PASCAL WAFULA WAMBULWA.....PLAINTIFF

VERSUS

JOTHAM MONYO.....DEFENDANT

JUDGMENT

1. The plaintiff vide a plaint dated **16/6/2014** and filed in court on **18/6/2014** instituted the present suit seeking for judgment against the defendant for a declaration that the plaintiff is the sole legal owner of the land comprised in Title **No. TRANS NZOIA/KIMONDO KIMONDO BLOCK 6/NALULINGO/267** and that the defendant is a trespasser in the said land and for an order that the defendant do move out the land comprised in Title **No. TRANS NZOIA/KIMONDO KIMONDO BLOCK 6/NALULINGO/267** failing which he be forcefully evicted therefrom together with anybody claiming under him, costs, interest and any other relief that the court may deem fit to grant.

2. The plaintiff, **Pascal Wafula Wambulwa**, testified as **PW1**, testified on **31/1/2019** and called two witnesses, that is, **Ben Wanyama Situma Assistant Surveyor (PW2)**, who testified on **4/2/2019** and **Ronald Sawenjai Walubengo (PW3)** who testified on **4/2/2019** and **18/2/2019** and adopted his written statement recorded on **1/3/2018** as his evidence-in-chief. They were all cross-examined by Mr. Teti for the defendant.

3. On **17/11/2020** this matter came up for hearing and neither the defendant nor his advocate appeared when the matter was called out, and the court, satisfied that a hearing notice had been served and an affidavit of service filed in court, deemed the defendant's case closed and set the matter down for judgment on **9/12/2020**.

4. I have considered the pleadings and the evidence of the plaintiff in this case. In the absence of the defendant's evidence only the plaintiff's evidence stands uncontroverted. Even the rigorous cross-examination of the witnesses by Mr. Teti, counsel for the defendant did not shake the evidence of the plaintiff and his witnesses. What came out is that the plaintiff was a member of the Trans Nzoia Investment Co Ltd, that he was given **No. TRANS NZOIA/KIMONDO KIMONDO BLOCK 6/NALULINGO/267** while the defendant was given **No. TRANS NZOIA/KIMONDO KIMONDO BLOCK 6/NALULINGO/262** and that the surveyor had verified that the defendant was in occupation of the plaintiff's plot and he has failed to vacate that plot.

5. I therefore find that the plaintiff has established this claim against the defendant on a balance of probabilities and I hereby grant the plaintiff judgment against the defendant as prayed in **prayers Nos. (a), (b) and (c)** in the plaint dated **16/6/2014**.

Dated, signed and delivered at Kitale via electronic mail on this 9th day of December, 2020.

MWANGI NJOROGE

JUDGE, ELC, KITALE.