



REPUBLIC OF KENYA



**Mutea & another v M’Nabea (Civil Case E022 of 2023)
[2024] KEMC 126 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEMC 126 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
CIVIL CASE E022 OF 2023
AT SITATI, SPM
JUNE 28, 2024**

BETWEEN

EVANS MUNENE MUTEA 1ST PLAINTIFF

MICHAEL MUTEA RIMBERIA 2ND PLAINTIFF

AND

ABRAHAM MWITI M’NABEA DEFENDANT

JUDGMENT

1. By a plaint dated 7th August, 2023 verified by an affidavit of similar date, the plaintiff prayed for:
 - a. Eviction of the defendants from Abothuguchi/Gaitu/4805 and a permanent injunction restraining the defendants from trespassing thereupon.
 - b. General damages for trespass and breach of agreement.
 - c. Costs of the suit.
2. Accompanying the plaint were:
 - i. List and bundle of documents containing title deed issued on 30/09/2020, agreement dated 8/5/2020 and notice dated 9/3/2020.
 - ii. List and witnesses’ statements of both plaintiffs.
3. The defendant did not defend the suit and the matter went for formal proof hearing.

The Plaintiff’s Case

4. PW1 Evans Munene Mutea adopted his witness statement telling the court that he purchased the subject land and paid the full price and obtained the title deed but the defendant refused to hand over



vacant possession. He thus asked the court to evict the defendant. He produced the above documents in evidence.

5. PW2 Michael Mwiti M'nabea adopted his statement and confirmed that he witnessed the sale agreement where the full purchase price was paid and title deed obtained but the defendant withheld vacant possession.
6. At the end of their testimony, the plaintiff closed their case. The duty of the court is to determine if the case has been established on a balance of probabilities.

Determination

7. There is cogent proof vide the sale agreement and title deed that the plaintiffs lawfully acquired ownership of the subject land. In the result, the defendant's refusal to hand over vacant possession was illegal and unlawful and must be met with the legal measures prescribed: eviction. This Honourable Court has been guided by 2 binding authorities on a similar issue : Margaret Karwira Mwongera -vs- Francis Kofo (2019) eKLR (Munyao J.) and James Mathura Makewa -vs- Nzari Nguli (2021) eKLR (Mbogo J.) wherein the 2 superior courts allowed the eviction to issue where it was proved that the Applicant was the registered proprietor and held title to the land. These eviction orders are issued under the provisions of sections 152A, 152B, 152E, 152F, 152G and 152I of the Land Act CAP 280 Laws Of Kenya.
8. As for the prayer of general damages for breach of contract, the court declines to award the same since it is a settled principle of law that general damages may not be awarded for breach of contract. In the authority of Pwani Telecomms Limited v Taita Taveta County Government (2021) eKLR (Ong'ino J.) had this to state on the issue of payment of general damages for breach of contract:

“32. In its plaint, the plaintiff also claimed loss of income and business at Kshs. 2,790,000 and general damages for breach of contract. On loss of income and business, the plaintiff in its submissions conceded that no evidence was adduced to support this claim.
9. Accordingly, when it comes to general damages, it is well settled in law that it cannot be awarded on a claim anchored on a breach of contract. In affirming that position, the Court of Appeal in the case of Joseph Urigadi Kedeva vs. Ebby Kangishal Kawai Kisumu Civil Appeal No. 239 of 1997 (UR) which was cited by the Court in James Maranya Mwita v South Nyanza Sugar Co. Ltd [2017] eKLR emphatically expressed itself thus:

“.... As to the award of Kshs. 250,000/= as general damages, Mr. Adere submitted that there can be no award of general damages for breach of contract.....We respectfully agree. There can be no general damages for breach of contract.....”
10. In the result, judgement is entered in favour of the plaintiffs as prayed in these terms:
 1. Eviction of the defendants from Abothuguchi/Gaitu/4805
 2. Permanent injunction restraining the defendants from trespassing thereupon.
 3. General damages for trespass and breach of agreement is dismissed.
 - d. Costs of the suit.
 - e. Interest at court rates

Right of appeal is 30 days.



READ AND SIGNED AT GITHONGO LAW COURTS THIS 28TH DAY OF JUNE, 2024

HON.T. A. SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

Present

Ronny Court Assistant

No Party Is In Court But Judgement Is Delivered

