



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. 72 OF 2018

JEREMIAH CHEBET KIBOR.....PLAINTIFF

VERSUS

SAMWEL AKUTA.....1ST DEFENDANT

WILSON ABERIT.....2ND DEFENDANT

SAMSON EMARE.....3RD DEFENDANT

JUDGMENT

1. The plaintiff commenced this proceedings with a plaint dated **27th July, 2018** filed in court on the same day. He prayed for judgement against the defendants for:

(a) An order for eviction of the defendants, their agents, servants, employees, children, family members and or any one claiming under them from the plaintiff's 2.5 acres or thereabout being part of the plaintiff's land plot Nos. 1608 and 1369 Milimani Settlement scheme.

(b) A permanent injunction.

(c) Costs.

(d) Any other relief the court deems just and fit to grant.

2. There is an affidavit of service sworn by one **Godfrey Masinde Sitati** on the **3rd September 2018** stating that the defendants were each served with plaint and summons in this matter. I am satisfied that they were so served. However none of the defendants filed any appearance or defence in this matter and the suit proceeded ex parte on the **29th January 2019** when the plaintiff alone testified in favour of his case.

3. The plaintiff's claim is that he is the lawful owner of plots numbers **1608** and **1369 Milimani Settlement Scheme** and that in the year **2017** the defendants invades and trespassed upon the two parcels of land.

4. Despite the involvement of the local administration the plaintiff has not succeeded in getting the defendants out of his said parcels of land hence this suit.

5. The plaintiff commissioned the services of a surveyor who confirmed that the defendants have trespassed upon the plaintiff's parcels of land aforesaid.

6. he produced the agreement dated **6/8/2012** showing that he purchased plot number **1369** from one **Nathan Kiplagat Kiptoo**, a copy of a letter of offer to the said Nathan, an original copy of a letter dated **30/1/2001** reflecting that Nathan was shown the beacons to plot **1369**, receipts in Nathan's name showing that he effected payments in respect of plot no **1369**, bank transaction documents showing that Nathan was paid money by the plaintiff, an original copy of a letter dated **4/12/2002** showing that the plaintiff was shown beacons to plot number **1608**, two original receipts showing that the plaintiff paid the dues required in respect of plot number **1608**, and a surveyor's report dated **18/5/2018**.

7. The Surveyors Report shows that the northern part of plot number **1608** has been encroached upon by people claiming to be squatters. It is clear that these are the defendants.

8. There is a demand letter dated **18/5/2018** from the plaintiff's advocate to the defendants demanding that they vacate the suit land parcels.

A copy of a letter from the Chief Milimani was also produced as an exhibit. It shows that the County Surveyor visited the suit land parcels. It requests that three people who were said to be still in occupation of the plaintiffs land be removed or arrested.

9. I have considered the plaintiff's oral evidence and the documentary evidence that he produced at the hearing of the suit. In my view the plaintiff has established his claim on a balance of probabilities against the defendants. I hereby enter judgment in his favour against the defendants jointly and severally and issue the following orders:

(a) An order for eviction of the defendants, their agents, servants, employees, children, family members and/or any one claiming under them from the plaintiff's 2.5 acres or thereabout being plots Nos. 1608 and 1369 Milimani Settlement scheme.

(b) A permanent injunction against the defendants and their agents restraining them from interfering in any manner whatsoever with the plots Nos. 1608 and 1369 Milimani Settlement scheme.

(c) The defendants shall meet the costs of this suit.

Dated, signed and delivered at Kitale on this 25th day of February, 2019.

MWANGI NJOROGE

JUDGE

Dated, signed and delivered at Kitale on this 25th day of February, 2019.

MWANGI NJOROGE

JUDGE

25/2/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Chebii for the plaintiff

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

25/2/2019