



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**ELC CASE NO. 24 OF 2015**

**ZACHEAUS KITUR KIPSIELE.....PLAINTIFF**

**VERSUS**

**JOEL KIPROP KOROS.....DEFENDANT**

**J U D G M E N T**

**Plaintiff's case**

1. By a plaint dated 27<sup>th</sup> February, 2015 and filed in court on 3<sup>rd</sup> March, 2015, the plaintiff seeks the following orders:

- a) **A declaration that parcel of land known as Site and Service phase II Block No. 2116/ S&S PH. II Plot No. 100 belongs to the plaintiff and the Defendant, whether by himself or his servants or agents or any person claiming through him, is not entitled to remain on the suit property.**
- b) **A permanent and mandatory injunction restraining the Defendant, whether by himself or his servants or agents or any person claiming through him, from entering, trespassing or otherwise interfering with the plaintiff's quiet possession and enjoyment land known as site and service Phase II Block No. 2116/ S&S PH II Plot No. 100 and directing and compelling him to pull down, break or remove structures on the suit land.**
- c) **Costs of this suit together with interest thereon.**
- d) **Any such other or further relief as this honourable court may deem appropriate.**

2. The plaintiff avers that he is and remains the lawful and rightful allottee of the suit Plot since 1998. That the defendant has without any colour of right or justification wrongfully entered and taken or remained in possession of the suit plot and without the express knowledge, consent and authority of the plaintiff or the former Municipal Council of Kitale put up temporary structures on the plot and intends to permanently settle thereon thereby depriving the plaintiff of the same. The plaintiff avers that by reason of the defendant's actions he has suffered and continues to suffer loss and damage. The plaintiff avers that the defendant has no right to occupy the suit land and is accordingly a trespasser on it.

3. In his evidence, the plaintiff stated that he works with the Government of Trans Nzoia County and lives in Bondeni. The Plaintiff testified that he is the owner of the suit land measuring 16 x 16.78 metres or thereabouts which Plot was allocated to him in 1998 after being repossessed from the defendant. That after the allocation, he paid the requisite charges and continues to pay rates to the County Government. The plaintiff stated that the defendant without any justification or right whatsoever and without the plaintiff's consent or permission has wrongfully remained in possession of the suit land and has built structures thereon, thereby depriving the plaintiff of the same. The plaintiff testified that it is just and fair that the defendant be restrained by this court from continuing with the trespass on the suit land and to be ordered to give vacant possession thereof.

4. The plaintiff produced the letter of allotment dated 27<sup>th</sup> February, 1998 as P. Exhibit 1, Repossession letter dated 12<sup>th</sup> June, 1997, (P. Exhibit 2), notice to vacate dated 25<sup>th</sup> May, 2009 (P. Exhibit 3 & 4), Rates clearance certificate (P. Exhibit 5), Receipts (P. Exhibit 6(a) – (f)) and demand notices (P. Exhibit 7(a) – (d)). The Plaintiff testified

that he was the one recognized by the County Government of Trans Nzoia as the true owner of the Plot. During cross-examination, the Plaintiff confirmed that he paid the full amount for the Plot in the year 2016.

5. Mr Ingosi for the Plaintiff cited Article 40 of the Constitution and Section 24(a) of the Land Registration Act, Section 27(a) of the

Registered Land Act Cap 300 (repealed), and Section 25(1) of the Land Registration Act, and submitted that the Plot having been repossessed from the defendant and thereafter allocated to the plaintiff, then it follows that the plaintiff is prima facie the absolute and indefeasible owner of the suit plot and is entitled to exclusive, quiet enjoyment, use and occupation. He submitted that the defendant failed to adduce evidence to prove the allegation that the plaintiff used his position as an Employee of the County Government of Trans Nzoia to short change the defendant. That the defendant failed to prove or show that he made any payment for land rates or that he was paying any ground rent to the County Government. Mr. Ingosi further submitted that if the defendant had any cause of action the same ought to be against the County Government of Trans Nzoia who repossessed the Plot and allocated it to the plaintiff. It was his submissions that the counter-claim is intended to rectify the records at the County Government offices through the back door. He urged the court to allow the plaintiff's claim and dismiss the defendant's counter-claim with costs.

### **Defendant's case**

6. The defendant filed a statement of defence dated 20<sup>th</sup> April, 2015 which was amended on 1<sup>st</sup> November, 2017 to include a counterclaim.

The defendant denies that the plaintiff is the owner and lawful and right allottee of the suit plot. The defendant avers that he is the lawful allottee of the suit plot and has been in possession since allotment in 1992. He avers that after the said allocation and possession, he paid all the requisite fees and has undertaken extensive developments thereon. Further, the defendant states that he has a temporary injunction in his favour against the Municipal Council of Kitale, now the County Government of Trans Nzoia, restraining it from interfering with the defendant's quiet possession thereof in Kitale CMCC No. 252 of 2009. The defendant avers that the plaintiff who is an employee of the County Government of Trans Nzoia is using his privileged position to gain unfair advantage over him and grab the suit Plot as the same was never repossessed after it was allocated to him.

7. In his counter claim, the defendant avers that on or about 22<sup>nd</sup> June, 1992 he was allocated the suit plot consequent to which he paid all the requisite fees and took possession and undertook some developments including putting up permanent and semi-permanent houses thereon. The defendant avers that the plot has never been repossessed from him and that the plaintiff being an employee of the County Government of Trans Nzoia is mischievously using his position to shortchange him at the County Revenue offices by purporting to pay rates as owner of the suit land in a bid to grab the plot from the defendant. The defendant prays for a declaration that he is the lawful allottee and/or owner of the suit plot and for an order of permanent injunction restraining the plaintiff from obtaining registration and or possession of the same plus costs and interest.

8. In his evidence, the defendant testified that he applied and was allocated the suit Plot in 1992. He produced the letter of allotment dated 22/6/1992 as D. Exhibit 1. He stated that he was shown the Plot on 8/2/1994 and produced a letter dated 8/2/1994 as D. Exhibit 2.

The defendant also produced receipts for payments made on 18/12/1992, 20/1/1993, 13/1/1994, 8/1/1993 and 17/6/1999 as D. Exhibit 4(a) – (d).

He stated that the Municipal Council of Kitale issued a notice of assessment letter dated 17/6/1999 (D. exhibit 3) for payment of Kshs 15,325/- which he stated that he paid. The defendant testified that he took possession in 1995 and has been in occupation since then. He denied receipt of P. Exhibit 1 and stated that he was not aware that the Plot has been repossessed from him, adding that he has not been refunded the money he paid. The defendant stated that he paid rates of Kshs 2500/= but when he went to pay later, the same was refused and informed that the Plot belongs to someone else. That is when he sued the Municipal Council. The defendant maintained that the suit Plot is his.

### **Determination**

9. From the pleadings and the evidence as well as the submissions, in my view, the following issues emerge for determination.

**i) Whether the land known as Plot No. 100 Site and Service Phase II Section 2116 was allocated to the defendant.**

**ii) Whether the suit Plot was repossessed and allocated to the plaintiff.**

**iii) Is the plaintiff entitled to the relief sought?**

**iv) Is the defendant entitled to the reliefs sought?**

**v) Who meets the costs of the the suit.**

10. What is not in dispute is that the defendant was allocated the suit plot by the defunct Municipal Council of Kitale in 1992. In the letter of allotment dated 22/6/1992 which was produced as D. Exhibit 1, the defendant was required to pay the sum of Kshs 10,000/- to the council within a period of 30 days from the date of that letter, failure to which the plot would be re-allocated to someone else. D. Exhibit 4(b) is a receipt dated 18/12/1992 for Kshs 10,000/- issued to the defendant by the Municipal Council of Kitale for the suit Plot. The defendant also produced other receipts dated 8/1/1993, 20/1/1993, 13/1/1994 and 17/6/1999. The letter dated 8<sup>th</sup> February, 1994 confirmed the defendant's Plot number as 100. The defendant was to be shown the Plot and was required to start development within one year. The defendant in his evidence confirmed that he was shown the Plot, took possession and commenced developments thereon.

11. On his part, the plaintiff alleged that the plot was allocated to him in the year 1998 after the same was repossessed from the defendant. The plaintiff produced a letter of repossession dated 12<sup>th</sup> June, 1997 (P.Exhibit 2). The said letter referred to an alleged advertisement in the Kenya Times of November, 1993 and a notice allegedly served on the defendant in the same period requiring him to pay the sum of Kshs

30,000/=. The said advertisement allegedly made in November, 1993 and the alleged notice were not produced. The court notes that whereas in the repossession letter dated 12<sup>th</sup> June, 1997, the outstanding amount is shown as Kshs 15,500/= the alleged advertisement and notice required the defendant to pay Kshs 30,000/= about four years later.

12. I Also note that whereas the purported advertisement in the Kenya Times and the notice allegedly served on the defendant was made in November 1993, the repossession notice was made on 12<sup>th</sup> June 1997, about 4 years later. Besides if the defendant had not complied with the alleged notice issued in November 1993, the question that begs an answer is why the Council issued the defendant with the letter dated 8<sup>th</sup> February, 1994 (D. Exhibit. 2 ) confirming that the Plot number is 100 and asking the defendant to get in touch with the Municipal Engineer to be shown the Plot. Further, the letter dated 8<sup>th</sup> February, 1994 required the defendant to start development on the Plot within one year. In my view, either the defendant had complied with the alleged advertisement and notice, hence the issuance of the letter of 8<sup>th</sup> February, 1994 or there was no such advertisement and notice issued. The defendant was categorical that he never received the letter dated 12<sup>th</sup> June, 1997 though the same was addressed to him. Moreover the said letter was not copied to the plaintiff, therefore one wonders how he obtained the carbon copy that he produced in court as P. Exhibit 2.

Considering the length of time it took from the date of the purported advertisement in November, 1993 and the date of the letter dated 12<sup>th</sup> June , 1997, and taking into account the contents of the letter dated 8<sup>th</sup> February 1994 (D. Exhibit .2 ), the conclusion one may make is that the repossession letter (P. Exhibit.2) was never issued and was manufactured to support the plaintiff's case.

13. The court also notes that the defunct Municipal Council was still issuing the defendant with notice of assessment and receiving payment on 17<sup>th</sup> June, 1999 (D. Exhibit 3 & 4(a) respectively) from the defendant yet the plaintiff alleges the plot had been repossessed from the defendant way back in June 1997. To me, this does not make sense at all. The only logical conclusion one can make is that the defunct Municipal Council of Kitale still recognized the defendant as the owner of the plot.

14. In light of the foregoing, I am not satisfied that the plaintiff has proved his claim against the defendant. From the material presented before court and the evidence adduced, it is clear that the suit property was allocated to the defendant. There is insufficient evidence to show that the same was repossessed from the defendant. It is my finding that the defendant's counter-claim has been proved on a balance of probabilities. I am not satisfied that the plaintiff has proved his claim and therefore the same is hereby dismissed.

14. Consequently, having held as above, the court enters judgment in the following terms:

**a) The Plaintiff's claim against the defendant is hereby dismissed.**

**b) The defendant's counter-claim is allowed in terms of prayer (a) thereof.**

**c) The costs of the suit to be borne by the plaintiff.**

It is so ordered.

**Dated, signed and delivered at Kitale this 15<sup>th</sup> day of July, 2019.**

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**C. K. YANO**

**JUDGE**

**15/7/19**

**In the presence of:**

**Kaosa holding brief for Ingosi for plaintiff.**

**No appearance for Defendant.**

**Court Assistant - Collins**

**Judgment delivered in open court in the presence of the Advocate for the Plaintiff and in the absence of the Advocate for the defendant.**