



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 99 OF 2017

JUMA ASBORN KWANUSU WATIBA WERE.....PLAINTIFF

VERSUS

SIMON KIMARU BIRGEN.....1ST DEFENDANT

ABRAHAM SAMBU.....2ND DEFENDANT

J U D G M E N T

1. In the plaint dated 23/5/2017 filed in this suit on 29/5/2017 the plaintiff seeks the following prayers:-

(1) That an order of eviction do issue against the defendants jointly and severally and their agents or any other person claiming through them from the whole of that land known as Land Title No. *Moi's Bridge Ziwa Block 17 (Chekata Sikaoni)/245* measuring approximately *nought decimal five five six nought (0.5560) Hectares* or thereabouts and the plaintiff be placed in possession thereof.

(2) Costs of the suit.

(3) Any other relief that the court may deem just and fit to grant.

2. The affidavit of Jackson Nyongesa Simiyu a court process server dated 6/7/2017 was filed on 6/7/2017. It shows that service of the summons to enter appearance plaint and other documents in the suit was effected upon the 1st and 2nd defendants on 14/6/2017. Despite that the defendants never filed any memorandum of appearance or defence. They never appeared at the hearing when this case was listed for formal proof. The plaintiff alone testified in the suit.

3. According to the plaint and the plaintiff's evidence the plaintiff is the registered absolute proprietor of the suit land, having been issued with a title deed on 16/7/1997. The plaintiff avers that his land neighbours that of the defendants who have without any justifiable cause trespassed upon the plaintiff's land and who are now claiming ownership of the same. The plaintiff avers that the defendants have denied him access to his said land and that despite demand they have refused to give vacant possession thereof, hence this suit.

4. The plaintiff adopted the statement that he filed in this suit on 29/5/2017 as his evidence-in-chief. The plaintiff also produced the original title to the suit land in evidence. He avers that the defendants unlawfully entered the suit land in the year 2013. Before then, the defendants and their now deceased father are said to have leased the suit land from the plaintiff. They used to pay rent in the sum of Kshs.

8000/= per year and they did so until 2011 when they failed to pay rent as required and said they wanted to purchase the suit land. However, by the year 2014, they had not paid for the land and the plaintiff asked them to vacate the land.

5. The plaintiff produced evidence that he had engaged the defendants requiring them to vacate the suit land and that he had even approached the local Chief who wrote letters dated 1/9/2016 and 9/9/2016 to the defendants.

6. Upon their refusal to vacate the land or attend at the Chief's office the matter was escalated to the Assistant County Commissioner's office and the latter wrote to the defendants a letter dated 14/12/2016. The defendants agreed to come to a meeting at the County Commissioner's office where after hearing the parties the County Commissioner directed that the suit land belonged to the plaintiff and that the defendants should vacate the said land. However, the defendants never vacated the suit land.

7. The County Surveyor came to the site and reinstated the boundary that the defendants had destroyed. The Surveyor's letter dated 20/12/2016 was produced as P. Exhibit 8. The defendants responded by having their Lawyer write a letter dated 13/1/2017. Despite a further letter from the plaintiff's advocate dated 25/1/2017 requiring the defendants to vacate, they stayed on the land hence this suit.

8. I have examined at the evidence of the plaintiff in this matter. I am satisfied that he has proved his claim regarding ownership of the land and eviction of the defendants from the suit land. However he has not proved any claim for mesne profits as submitted and none are claimed in the plaint dated 23/5/2017.

9. I therefore find that the plaintiff's claim for eviction against the two defendants' has merit and I enter judgment in favour of the plaintiff against the two defendants jointly and severally in terms of the first and second prayers of the plaint dated 23/5/2017.

Dated, signed and delivered at Kitale on this 25th day of **January, 2018.**

MWANGI NJOROGE

JUDGE

25/01/2018

Coram - Before Mwangi Njoroge Judge

Court Assistant - Isabellah

COURT

Judgment delivered in open court in the presence of Mr. Bisonga the plaintiff and in the absence of the defendant

MWANGI NJOROGE

JUDGE

25/01/2018