



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 17 OF 2013**

**EMILY SIKUKU MOMANYI.....PLAINTIFF**

**VERSUS**

**ROTINO MOIBEN LOTIOLO.....DEFENDANT**

**JUDGMENT**

1. In the plaint dated 18/2/2013 filed in this suit on 19/2/2013, the plaintiff prays for the following orders against the defendant:-

**(a) A declaration that the plaintiff is the legal owner of Plot No. 439 measuring approximately 2.13 hectares at Chepchoina Settlement Scheme Phase 1 and that the defendant and those claiming under him do move out of the said plot and failing which they be evicted forthwith at their own costs.**

**(b) An order of permanent injunction restraining the defendant and all those claiming under him from interfering with the plaintiff's user and quiet enjoyment of the suit land.**

**(c) Costs of the suit.**

**(d) Any other relief this Honourable court may deem just to fit to grant.**

2. The plaintiff pleaded in the body of the plaint that she was allocated **Plot No. 439** measuring approximately **2.13 Ha** by the Director of Land Adjudication and Settlement on or about 22/8/2008 and that she has fully paid the requisite Settlement Fund Trustee Loan.

3. However, in the year 2011 the defendant illegally entered the plaintiff's said land and ploughed it and planted maize thereon and has remained thereon to date.

4. The plaintiff avers that her efforts to have the defendant vacate the land were not fruitful but were met with violence against her which prompted the arrest and arraignment of the defendant in court on charges of assault contrary to Section 251 of the Penal Code at the **Kitale Chief Magistrate's Court Criminal Case No. 610 of 2011**. Even as that case was pending, the plaintiff stated, the defendant continued occupying the land and threatening her with violence and death.

5. The defendant filed defence in this suit on 10/4/2013, and the plaintiff filed a reply to defence dated 17/6/2013. However the defendant did not attend court or call evidence to aid his defence when this suit came up for hearing on 11/12/2017 despite the fact that he had notice of the hearing date, it having been taken by consent in court on 22/8/2017. The hearing proceeded ex parte.

6. The plaintiff gave evidence in support of her claim. She substantially reiterated the matters raised in the plaint. She produced a copy of the allotment letter issued by the Director of Land Adjudication and Settlement as P. Exhibit 1 and receipt dated 14/11/2008 and 14/2/2012 respectively for Kshs.2885/= and Kshs.3000/= respectively.

7. The plaintiff avers that she was shown the location of Plot No. 439 after the payments were receipted. She also testified that the title documents in respect of the suit land are currently being processed. She produced a copy of a transfer and a discharge of charge as evidence. The copy of transfer shows that **LR. No. Kwanza District/Chepchoina Phase 1/439** is to be transferred from the Settlement Fund Trustees to the plaintiff. The discharge of charge for the same property bears the plaintiff's name and identity card number.

I find that the plaintiff has established her claim against the defendant on a balance of probabilities. I therefore enter judgment in favour of the plaintiff against the defendant in terms of **Prayers (a), (b) and (c)** of the **Plaint** dated **18/2/2013**.

**Dated, signed and delivered at Kitale on this 6<sup>th</sup> day of February, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**6/2/2018**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Majanga holding brief for Chebii for the plaintiff

**COURT**

Judgment read in open court in the presence of counsel for the plaintiff.

**MWANGI NJOROGE**

**JUDGE**

**6/2/2018**