



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 49 OF 2007

EDWARD KILWAKE PLAINTIFF

VERSUS

BENSON MUGOMA DEFENDANT

JUDGMENT

1. The plaintiff filed this suit on the **29th March 2007** and filed an amended plaint on the 21/12/2007. The defendant filed a defence on the 21st January 2008 and a notice of preliminary objection on the 10th July 2009.

2. In his amended plaint the plaintiff sought the following orders:

(a) A temporary injunction be issued against the defendant/agents/employees/ or anybody acting under instructions from ploughing/planting/weeding/or any way (sic) interfering with peaceful possession of LR No. 2116/962.

(b) Declaration that he is the owner of LR No 2116/962 situated in Kitale.

(c) Costs of this suit.

THE PLEADINGS

The Plaintiff's Case.

3. The plaintiff's case is that he is the registered owner of the suit land which measures **0.4050 Ha**. He alleges that the defendant attempted to use the suit land between the years 2000 - 2007. As at the time of the filing of this suit the defendant was said to be still threatening to use the said land without the plaintiff's consent hence the suit.

The Defendant's Defence

4. The defendant denied the plaintiff's claim. He averred that he is the allottee of the suit land and that he has been in occupation of the suit land from the early 1980s to date. He denies having trespassed onto the plaintiff's plot and avers that the plaintiff's suit is defective.

5. The preliminary objection that the defendant raises vide the notice dated 10th July 2009 and filed on the same day is that the plaintiff's suit is defective for want of a verifying affidavit and that the plaint does not comply with the mandatory provisions of **Order VI A Rule 7** of the **Civil Procedure Rules**.

THE EVIDENCE OF THE PARTIES

The Plaintiff's Evidence

6. The plaintiff in his evidence-in-chief adopted the contents of the amended plaint. He adopted the contents of his statement filed on 18/7/2017 as his evidence in chief in this case. The plaintiff reiterated that is the owner of the suit land and that the defendant is encroaching on it. He produced a certified copy of the title to the land. It shows that the land is registered in his name on 15th June 1990 and title was issued Grant No IR 49727/1. He also produced a certified copy of the letter of allotment his application for allotment of a plot and the original beacon certificate.

The Defendant's Evidence

7. The defendant did not attend court to give evidence in support of his defence.

DETERMINATION

Issues for Determination

8. I have considered the pleadings and the evidence given in this case at length. This court must determine the following issues which now arise:

(a) Who holds title to the suit land?

(b) What orders should issue?

(a) Who holds title to the suit land?

9. The documents produced by the plaintiff show that he holds title to the suit land. The defendant never appeared in court to give evidence to counter the plaintiff's claim. As between the two parties in this case, I would say that the plaintiff has demonstrated better title. The defendant's intimation that he would enjoin the Hon. Attorney General through a Third Party Notice was not carried through to its ultimate end. Therefore though in other documents in this suit the defendant avers that he holds a letter of allotment, the process of allotment to him was not illuminated and the process of allotment to the plaintiff was not challenged.

(b) What orders should issue?

10. The defendant has failed to put up any evidence to support his defence against the plaintiff's case and I find that as between the parties in this case, the plaintiff has proved his case against the defendant on a balance of probabilities.

CONCLUSION

I therefore enter judgment in favour of the plaintiff against the defendant in terms of prayer **(a)** of the amended plaint dated **21st December 2007** in this suit. The parties shall each bear their own costs of his suit.

Dated, signed and delivered at Kitale on this 31st day of May, 2018.

MWANGI NJOROGE

JUDGE

31/5/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Lowasikou holding brief for Nyamu for plaintiff

N/A for defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

31/5/2018