



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 35 OF 2018

PAUL CHERUIYOT CHEPKONGA.....PLAINTIFF

VERSUS

ABDI EWOIDEFENDANT

JOHN SIMIYU SIKENGEDEFENDANT

KENNEY SIKENGEDEFENDANT

ARUMANE LOTILIEMDEFENDANT

J U D G M E N T

1. In the plaint dated 27/3/2018 filed in this suit the plaintiff seeks the following prayers:-

(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 6 acres or thereabout being part of the plaintiff's land plot Nos. 1600 and 1601 Milimani Settlement Scheme.

(b) Permanent injunction.

(c) Costs.

(d) Any other relief this honourable court may deem just and fit to grant.

2. The affidavit of Godfrey Masinde Sitati a court process server dated 25/4/2018 was filed into the record. It shows that service of the summons to enter appearance plaint and other documents in the suit was effected upon the defendants on 4/4/2018. 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 his claim is that he is the legal and lawful owner of **Plot Nos. 1600 and 1601** measuring **6.0** hectares at Milimani Settlement Scheme having bought the same from Hon. Francis Kaino Mutwoi and Hon. Robert Kipkorir respectively sometime on 22/10/2013 and which he took immediate possession, use and occupation of; that the defendants together with others invaded the suit land but they were advised and warned by the OCS Cherangany Police Station; that some of the invaders gave vacant possession of portions of the land while the defendants herein persisted in remaining thereon; that he informed the local administration, the police and the Settlement Office who also advised the defendants to keep off the plaintiff's land; that the plaintiff further took the initiative to have the County Surveyor establish ownership and the extent of trespass upon the plaintiff's land by the defendants which the report indeed confirmed the defendants to be trespassing on the suit land; that the plaintiff had not authorized the defendants to move into the suit land and that the defendants have no proprietary rights over the same.

4. The plaintiff further avers that the defendants have for no cause whatsoever refused to give vacant possession of the said land and have even prevented the plaintiff from quiet use, possession and enjoyment of the same.

5. The plaintiff adopted the statement that he filed in this suit on 27/3/2018 as his evidence-in-chief. I have read the said statement and considered the oral evidence of the plaintiff.

6. The Plaintiff has produced two agreements to show that he bought the land. They are signed by both the plaintiff and the vendors and they are attested to by an advocate. The plaintiff also produced loan repayment receipts, showing that after the agreements were entered into, he

repaid the loan owed in respect of the suit properties to the settlement fund trustees. He produced the copies of the letters of offer to the vendors who after allotment subsequently sold him the land. He also produced a copy of a Surveyor's Report dated 9/3/2017 showing that there was indeed some encroachment on his plots.

7. The plaintiff has satisfied this court that he attempted to secure vacant possession of the land from the defendants through requests to the police, the local administration and the settlement office but it was all in vain, hence this suit. All his evidence was not controverted.

8. It is clear from the evidence given that the plaintiff did buy the two plots subject matter of the instant suit. In my view the plaintiff has established his claim on a balance of probabilities against the defendants. I therefore enter judgment in favour of the plaintiff against the defendants jointly and severally and issue the following orders:

(a) The defendants, their agents, servants, employees, children, family members and/or any one claiming under them shall vacate the plaintiff's 6 acres or thereabout being part of the plaintiff's land plot Nos. 1600 and 1601 Milimani Settlement Scheme failure to which they shall be evicted therefrom;

(b) An order of permanent injunction shall issue restraining the defendants, their agents, servants, employees, children, family members and or any one claiming under them from entry into or any interference whatsoever with the plaintiff's land comprised in plot Nos. 1600 and 1601 Milimani Settlement Scheme.

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

It is so ordered.

Dated, signed and delivered at Kitale on this 11th day of July, 2018.

MWANGI NJOROGE

JUDGE

11/7/2017

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Chebii for the plaintiff

COURT

Judgment read in the presence of the plaintiff's counsel in open court.

MWANGI NJOROGE

JUDGE

11/7/2018