



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**E&L CIVIL SUIT NO. 125 OF 2017**

**GEORGE KAMAU GITHAE.....PLAINTIFF**

**VERSUS**

**MOSES CHEBOI.....DEFENDANT**

**JUDGMENT**

By a plaint dated 23<sup>rd</sup> March 2017 the plaintiff herein sued the defendant seeking for the following orders:

- a) The defendant, his family, servants and agents be evicted from parcel of land registration Number Uasin Gishu/Moiben Scheme/1 and restrained from further trespassing on the plaintiff's parcel of land.
- b) Costs of this suit
- c) Any other relief that this Honourable court may deem fit to grant.

The defendant was served with summons to enter appearance and filed a memorandum of appearance and defence which was a general denial of the claim. When this matter came up for hearing the defendant's Counsel Anassi Momanyi Advocate filed an application to cease acting for lack of instructions. The same was allowed on 17/1/18 and a hearing date fixed for 9/4/18 with a directive that the plaintiff serves a hearing notice on the defendant directly.

On 9<sup>th</sup> April 2018 Mr. Mitei applied for adjournment on the grounds that he had just been instructed by the defendant and therefore needed time to peruse the file. Counsel for the plaintiff vehemently opposed the application for adjournment on the grounds that those were delaying tactics but the court gave the defendant the last chance to defend his case and fixed the matter for hearing on 24<sup>th</sup> July 2018.

On 23<sup>rd</sup> July 2018 Mitei & Co Advocates filed an application to cease acting for the defendant but did not appear to prosecute it. This was further a delaying tactic on the part of the defendant not to proceed with the case.

The plaintiff gave evidence and stated that he is the registered owner of the suit land having been registered as such on 28<sup>th</sup> July 2008. He testified that he got the land in 1975 through the Settlement Fund Trustee (SFT) He produced the letter of offer, the Charge by the SFT, discharge of Charge, transfer of land form, certificate of official search and a title deed registered in his name as exhibits before the court.

He stated that he sued the defendant because he trespassed on his land in 2016. He also testified that he demanded that he vacates the suit land, reported the matter to the area Chief who wrote a letter to him but he refused to vacate. He therefore prayed that the court enters judgment as prayed in the plaint and order that the defendant vacates the suit land.

**Analysis and Determination**

This is a suit where the defendant was given an opportunity to defend himself but failed to appear in court to do so. The issues for determination are as to whether the plaintiff is the registered owner of the suit land and whether he is entitled to the orders sought in the plaint for eviction. Is the suit time barred as alleged in the defence by the defendant?

It is not in dispute that the plaintiff is the registered owner of the suit land having produced a title registered in his name. The said title deed has not been disputed as having been fraudulently obtained or unprocedurally procured. The plaintiff also produced the documents from SFT showing how he was allotted the land, the charge on the land and the discharge of charge on the land. He also produced a copy of a title deed indicating that he was registered as owner in 2008.

From the defendant's general denial of the plaintiff's claim he does not state whether the land belongs to him or how he acquired the land. He just stated that the plaintiff's claim is time barred. The plaintiff averred that the defendant trespassed on his land in 2016 and that is why he came to court to assert his rights to the land.

The plaintiff also claimed that the defendant initiated the lodging of a caution by someone who is claiming purchaser's right and yet he has never sold the land to anybody. The said purchaser was not enjoined in this suit by the defendant. I find that the plaintiff's claim is tenable and is not time barred as alleged by the defendant. The land was registered in the name of the Settlement Fund Trustee and the same was just discharged in 2007 and transferred to the plaintiff on 28<sup>th</sup> July 2008. If the defendant was to claim adverse possession which he has not then he should be aware that time for adverse possession does not run against the SFT. Taking that into account from 2008 to 2017 the time would not qualify for adverse possession as it is only 9 years.

I have considered the evidence together with the documents produced by the plaintiff and the relevant law, and find that the plaintiff has proved that he is the bonfide registered owner of parcel known as UASIN GISHU/MOIBEN SCHEME/1 measuring 32.0Ha.

I therefore enter judgment for the plaintiff against the defendant and make the following orders.

a) The defendant, his family, servants and agents are hereby restrained from trespassing and ordered to give the plaintiff vacant possession of parcel of land registration Number Uasin Gishu/Moiben Scheme/1 within 30 days failure of which an eviction order to issue.

b) The defendant to pay costs of this suit.

**Dated and delivered at Eldoret this 25<sup>th</sup> day of September, 2018.**

**M.A ODENY**

**JUDGE**

Judgment read in open court in the presence of Mr. Mwaniki for Plaintiff and in the absence of the defendant.

Mr. Koech: Court Assistant.