



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 12 OF 2012

SIMON KIBET KIPTUM.....PLAINTIFF

VERSUS

JOSEPH YANO..... DEFENDANT

JUDGEMENT

INTRODUCTION

1. The defendant is the beneficial owner of two plots namely **Plot No. 1429** and **1432**. In between these two plots is **Plot No. 1431** which was allotted to **William Kipchoge Cheptoo** (suitland). William Cheptoo's son who is now deceased was married to the plaintiff's daughter. William Cheptoo surrendered the suitland to the plaintiff who was to utilize it to sustain their grandchildren. The plaintiff attempted to take possession of the suitland but the defendant chased him away prompting the plaintiff to file this suit seeking his eviction.

PLAINTIFF'S CASE

2. The plaintiff testified that the suitland is **5 acres**. He was evicted from the suitland by the defendant in 2002. He called the allottee of the plot PW2 William Kipchoge Cheptoo who produced the allotment letter as well as receipt which he used to settle monies due on account of the plot. He confirmed that he is the one who surrendered the plot to the plaintiff in order for the plaintiff to sustain their grandchildren.

DEFENDANT'S CASE

3. The defendant stated that he is the beneficial owner of **Plot Nos. 1429** and **1432**. He stated that he has nothing to do with the suitland and that he is not occupying it.

ANALYSIS OF EVIDENCE

4. I have gone through the pleadings, evidence adduced and the submissions by the plaintiff. There is only one issue for determination in this case and that is whether the defendant is in occupation of the suitland and if so whether he should be evicted therefrom.

5. Though the defendant denies that he is not occupying the suitland and that he has nothing to do with it, there is evidence from a surveyor who went to the ground and found that the defendant is occupying three parcels namely **1429**, the suitland (**1431**) and **1432**. As I had said hereinabove, the defendant is the beneficial owner of **Plot No.1429** and **1432**. The suitland is in between the two. The surveyor was sent to the ground pursuant to a request by the plaintiff's counsel.

6. The surveyor process was carried out by B.O. Hussein, County Surveyor Trans-Nzoia County. The survey report was filed in court on 18/9/2013. According to this report, the defendant occupies both **Plot 1429** and **1431** (suitland). These two plots comprise of approximately **11.05 acres**. There was evidence that the suitland is about **5 acres** and **Plot 1429** is also about **5 acres**. It is therefore clear that the defendant is illegally occupying the suitland. He has been charged with the offence of forcible detainer in Kitale Chief Magistrate's Court.

7. The defendant's argument is that if he were occupying the suitland, he could be occupying 15 acres. This argument is without basis. The surveyor found that he is occupying the three parcels. Two parcels belong to him and they are each 5 acres. The suitland is also 5 acres. The surveyor's report was clear that the combined acreage for Plot 1429 and the suitland is what comes to 11.05 acres. The defendant is taking advantage of the fact that the suitland falls in between his two plots and he therefore wants to take it over to make the three plots be one block.

8. The defendant also seems to argue that the suitland is being claimed by two different people that is the plaintiff and another. This is neither here nor there. The fact remains that the plaintiff is the one who has been given the land by the allottee of the suitland. The allottee of the suitland was in court and he supported the plaintiff's claim.

DECISION

9. I find that plaintiff has proved his case against the defendant. An order of eviction is hereby given directing the removal of the defendant or his agents from **Plot No. 1431 Milimani Settlement Scheme**. The defendant shall pay costs of this suit to the plaintiff.

Dated, signed and delivered at Kitale on this **20th** day of **January, 2017**.

E. OBAGA

JUDGE

In the presence of Mr Bororio for Mr Kaosa for Plaintiff and Mr Khisa for Mr Ingosi for Defendant.

Court Assistant – Isabellah

E. OBAGA

JUDGE

20/1/17