



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 93 OF 2016**

**WILLIAM KIPTOO KIPTUMARILL.....PLAINTIFF**

**VERSUS**

**TAPYOTIN KANDA.....DEFENDANT**

**J U D G E M E N T**

1. The plaint in this case was filed on 3/6/2016. The plaintiff prayed for the following orders:-

**(a) An order that the defendant do demolish her premises/structures on the plaintiff's land Plot No. Cherangany/Koitugum/732 and more out failure of which she be evicted and the structures demolished at her own costs through the O.C.S. Kapcherop.**

**(b) Costs.**

**(c) Any other relief this Honourable Court may deem just and fit to grant.**

2. The plaintiff pleads that he is the legal sole owner of Plot No. **Cherangany/Koitugum/732** measuring **2 acres** having bought the same from one **Keture Komen** sometime in **1996**. The plaintiff avers that he took immediate possession and physical occupation thereof and has resided thereon for over **20 years** now without any interruptions whatsoever.

3. He states that after the demise of Keture Komen in the year 2013, the defendant trespassed onto a portion of the plaintiff's land and erected a structure on the same "illegally and forcefully". Despite demand, the defendant has refused to demolish the said structure and has not moved out of the land.

4. There is an affidavit of service showing that the defendant was served with plaint and summons. However the defendant never filed any memorandum of appearance or defence. The suit proceeded to formal proof on 17/3/2017 when only the plaintiff testified.

5. The plaintiff produced the agreement he had made with Keture Komen dated 3/8/1996. The same bears the stamp of the area Assistant Chief and the stamp of an Advocate's firm. I find it appropriately attested to. It was marked "P.Exhibit 1". The copy of the vendor's National Identity Card was produced as "P.Exhibit 2". According to the plaintiff the two parties went to the Land Control Board to obtain consent to subdivide. The Land Control Board's Consent to subdivide was produced as "P.Exhibit 4".

6. The land used to be one original **Parcel No. 166**. It was subdivided into two parcels and the plaintiff's entitlement was issued with the **Number 732**. The seller's plot was issued **Number 731**. A mutation was prepared "P.Exhibit 3" which gave rise to the subdivision with these numbers. The plaintiff produced the original title deed which the court viewed and compared with the copy filed with the list of documents

dated 15/3/2017. Upon finding the details are the same on both documents the original was returned to the plaintiff and the copy retained as evidence.

7. According to the plaintiff's evidence the defendant came onto the plaintiff's part of the shamba from the deceased seller's side where she had been living, ploughed part of the plaintiff's portion and declined to leave even upon a report being made to the Chief's office and her being addressed to a demand letter from the plaintiff's Advocate "P. Exhibit 6". The plaintiff prayed for an eviction order and that the O.C.S. Kapcherop do assist in the eviction and costs of the suit.

8. There was no evidence from the defence since this was a formal proof. I find that the plaintiff, whose evidence was not controverted, has proved his case on a balance of probabilities. He is the registered owner of the land and according to Section 25 of the Land Registration Act, his interest acquired for valuable consideration from the seller are not liable to be defeated except as provided in the Act. The plaintiff is therefore entitled to the prayers in the plaint.

9. Accordingly, I hereby issue an order that the defendant shall demolish her structures which are illegally built on the plaintiff's land Parcel No. **Cherangany/Koitugum/732** and vacate from the said land parcel, failure to which she shall be evicted and her structures demolished and the expenses of such demolition shall in any event be borne by the defendant. The Officer Commanding Kapcherop Station shall provide security to ensure that the eviction is carried out in an orderly manner. Costs of this suit shall be borne by the defendant.

**Signed, dated and delivered at Kitale on this 30<sup>th</sup> day of May, 2017.**

**MWANGI NJOROGE**

**JUDGE**

**30/05/2017**

Before - Mwangi Njoroge Judge

Court Assistant - Isabellah

Mr. Chebii for Plaintiff

N/A for the Defendant

Judgement read in open court.

**MWANGI NJOROGE**

**JUDGE**

**30/05/2017**