



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 364 OF 2017 A

FORMERLY KISII ELC NO. 703 OF 2016

BENSON MORANGA NYACHIO.....PLAINTIFF

-VERSUS-

RAPHAEL MUSYOKA MASILI.....DEFENDANT

JUDGEMENT

The Plaintiff has filed this suit by way of plaint dated 14th December, 2012. Wherein the Plaintiff is seeking an order of eviction against the Defendant and/or any other person using, cultivating and/or occupying a parcel of land known as **KILGORIS MAJENGO 64** and the cost of the suit.

The Plaintiff states that he is the lawful registered owner of the aforesaid plot and has been paying land rates for the said plot and that the Defendant has without any claim trespassed on the said plot to his detriment.

The Defendant filed a Statement of Defence to the suit on 16th June, 2012 wherein he denied the contents of the plaint and more particularly the averment that the Plaintiff was the owner of the suit land. The Defendant further states that it is the Plaintiff who trespassed and was arrested and charged in court for the same and prays that the suit be dismissed.

On the 11th July, 2017 the suit was set down for hearing after the court satisfied itself that the parties had complied with order 11 of the Civil Procedure Rules. However, on the material day the Defendant did not appear. The court having satisfied itself that indeed the Defendant was properly served as an affidavit of service was filed by a process server ordered that the hearing do proceed as scheduled.

The Plaintiff testified in Kiswahili and stated that the suit plot was initially allocated to one Samuel Menu who was allocated the said plot by the defunct County Council Narok and produced a letter of allotment as plaintiff exhibit No. 1.

The Plaintiff also stated that plot was purchased by one Maranga from the initial allottee on 28th August, 1979 and produced copies of the Sale Agreement and the vendor's national identity card which were plaintiff's exhibits 2 and 3 respectively. The plaintiff stated that he purchased the plot from Maranga on 3rd May, 1996 and produced a copy of the Sale Agreement.

The Plaintiff produced letters from the defunct County Council of Narok to prove that he indeed was the registered owner of the plot and has been paying rates and rents on the said plot to the County Council of Narok and its successor the County Government of Narok.

In the absence of the Defendant the evidence of the Plaintiff remains unchallenged.

From the evidence of the Plaintiff and the evidence produced before me I am satisfied that the Plaintiff has proved his case on a balance of probabilities and I will therefore enter Judgment in favour of the Plaintiff as follows:-

- 1. That the Plaintiff is the lawful owner of that parcel of land known as KILGORIS MAJENGO 64.**
- 2. That an order of Eviction do issue against the Defendant which order must comply with the provision of Section 152 (a) to (g) and section 55 of the land Act (Revised Edition) 2016.**
- 3. Costs of the suit.**

Dated, Signed and Delivered in open court at **NAROK** on this **31st** day of **July 2017**

Mohammed Noor Kullow

Judge

31/7/17

In the presence of:-

Plaintiff

N/A for the defendant

CA:Chuma