



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT NAIROBI

LAND CASE NO. 1356 OF 2014

KEROKA HIGHWAY SERVICE STATION.....PLAINTIFF

VERSUS

MAURICE ODONGO OGOT.....DEFENDANT

J U D G M E N T

1. The plaintiff in this suit filed a plaint dated **13th October, 2014** on **23rd October, 2014**. It stated that the defendant had been initially offered all that property known as **NBI BLK 97/0759/152 Tassia Estate Nairobi** by the **National Social Security Fund**(hereinafter alternately referred to as **NSSF**) but he defaulted in the payment of the amount required for the purchase of the same despite several demands by the National Social Security Fund. The plaintiff states that upon the defendant failure to fulfill the sale requirements, the National Social Security Fund repossessed the suit land from the defendant and subsequently it invited the plaintiff to purchase the property which the plaintiff did.

2. The plaintiff's case is that the defendant has entered into the suitland and has continued to remain thereon without any lawful claim to it. The plaintiff claims that this amounts to trespass and seeks several orders as follows:-

(a) A permanent injunction.

(b) General damages

(c) Costs

3. The defendant filed a memorandum of appearance on **25/11/2014** and a defence on **18/12/2014**. In that defence the defendant denied the claim and averred that the plaintiff is a stranger he does not know; that the defendant is the sole and absolute proprietor of the suit property; that he has a house on the suit property; that he is in the process of constructing another house on the suit property; that the defendant purchased the suit premises in a tenant purchase scheme from the **NSSF** and has been in regular payments to the Fund, which completion of payments will be in December, 2019. He denies having defaulted on any payments.

4. The defendant further pleads that the doctrine of "*repossession*" does not apply to real property but to Chattels Mortgages and hire purchase contracts and that by this reason the suit is an abuse of the court process. The defendant pleads that the **NSSF** must be made a defendant in this suit so that the court may properly and conclusively adjudicate upon the matters herein. However by the time of the hearing no such effort had been made to enjoin the National Social Security Fund.

5. The defendant further pleads that he is not a trespasser on his own property and the plaintiff's quest for injunctive remedies, eviction and damages is therefore misplaced. He also avers that under the doctrine of adverse possession, he is legally the proprietor of the suit premises.

6. On **23/2/2016** **Nzamba Kitonga & Co. Advocates** filed a Notice of Withdrawal from acting as advocates for the defendant. All subsequent affidavits of service, to wit, the affidavits dated **3/4/2017**, **10/8/2016**, **12/5/2017** and **13/5/2017** state that service was effected upon the defendant's wife. On **16th May** when the matter came up for hearing the court was not satisfied with the service and the matter had to be adjourned to **23rd May 2017** for fresh service to be effected.

7. The hearing of the suit proceeded on **23/5/2017**. The defendant was absent despite service. The plaintiff called one witness, a director of the plaintiff company, **Mr. Abdirizak Hullow**. He adopted his witness statement filed with the plaint and dated **5/10/2014**. He testified that he bought the property known as **LR. No. NBI BLK 97/0759/152 Tassia Estate** from the National Social Security Fund and paid for it. He paid **Kshs.1,226,460/=** inclusive of some outgoings. The National Social Security Fund acknowledged receipt of the monies vide a letter dated **18/12/2013**. The original letter was produced as **P. Exhibit 1**. He was also given receipts, originals and originals of which he showed

to court and whose copies were compared with them and marked **P. Exhibit 2 (a)** and **(b)** and the original returned to the PW1. **P. Exhibit 3** is a copy of a letter which is form the NSSF which seems to confirm that the Board of Trustees has sold the **LR. No. KBI/BLK TASSIA-11-97/0759/152** to the plaintiff.

8. P. Exhibit 4 is a copy of a letter from the NSSF Managing Trustee informing the defendant that the plot **NBI/BLK 97/0759/152-Tassia Estate** has been repossessed and sold to someone else and that he should remove his belongings from the plot to allow the new owner take vacant possession of the plot. The copy of the demand letter from the defendant asking the defendant to vacate was produced as **P. Exhibit 5**. Despite all these, the defendant failed to remove himself from the premises hence this suit.

9. The defendant never appeared in court to testify or call evidence on his behalf. The hearing of the suit therefore proceeded *exparte*. There is no evidence to controvert the plaintiff's claim. I find that the plaintiff has proved his claim on a balance of probabilities.

10. I therefore grant prayers No. **(a)** and **(b)** of the plaint as prayed. However the order on eviction and injunction issued herein shall be suspended for a period of **90 days** to allow for the defendant to remove himself and his effects from the suit land. No evidence or submission was made as to general damages for trespass and I will award a nominal sum of **Ksh.50,000/=** to the plaintiff. The plaintiff shall also have the costs of this suit.

It is so ordered.

Signed at Kitale on this 21st day of July, 2017

MWANGI NJOROGI

JUDGE

Dated, signed and delivered at Nairobi on this 20th day of September, 2017

K. BOR

JUDGE

Judgement read in open court in the presence of:

C. Kangethe for the Plaintiffs

No appearance for the Defendant

Court Assistant: V. Owuor

K. BOR

JUDGE