



**REPUBLIC OF KENYA**

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

**ELC CAUSE NO. 337 OF 2017**

**JAMES LEKAKENY.....PLAINTIFF**

**-VERSUS-**

**BENJAMIN K CHERUIYOT.....1<sup>ST</sup> DEFENDANT**

**ZACHARY MOSE NYANCHOKA.....2<sup>ND</sup> DEFENDANT**

**JULIUS KIPKORIR LANGAT.....3<sup>RD</sup> DEFENDANT**

**NARIKU MURAN ENOLE KEIS.....4<sup>TH</sup> DEFENDANT**

**OUKO MOGOI.....5<sup>TH</sup> DEFENDANT**

**MARY NAKUPOI LEKOKEL.....6<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

The Plaintiff had commenced the suit herein by way of plaint. The Plaintiff avers that he is a resident of Nkararo Location which is part of Nkararo Adjudication Section that was opened in May 1985 and that he was the Original Allotee and Occupant of plot No. 292.

The Plaintiff avers that while he was in occupation the members of the adjudication committee allocated his committee allocated his plot and others to other people allegedly from Siria clan while he and the others who were from the Moitanik and Uasin Gishu were left out.

The Plaintiff alleges that sometime in December, 2014 the Defendants encroached upon his land and started cutting down trees, tilling the land and continued to do so and hence he seeks for the court's intervention to have the Defendants evicted from the suit land.

The Defendants herein were served with the plaint and summons to enter appearance but they neither filed or entered appearance or filed a defence.

On 4<sup>th</sup> May, 2017 when the matter came up for hearing the Defendants did not appear in court even though the plaintiff had served them with a hearing notice.

The Plaintiff in his evidence stated that in the year 2014 there was an adjudication that was done and he was allocated plot No. 292 in Nkararo adjudication section and to this Plaintiff produced a letter to confirm the said allocation which was marked as plaintiff exhibit No. 1.

The Plaintiff further stated that the Defendants invaded the suit land and destroyed crops thereon and they started to cultivate the land themselves and he thus seeks the court's intervention to have the defendants evicted from the suit land and he paid the costs of the suit.

At the conclusion the counsel appearing for the Plaintiff stated he wishes not to make any submissions and therefore the court do determine the suit relying upon the evidence of the Plaintiff as he will not make any submissions.

I have looked at the pleadings filed and the testimony of the Plaintiff who is the witness in the matter and the issue for determination is whether the Plaintiff has offered his case on a balance of probabilities to warrant the orders he seeks the court to grant.

In the plaint filed in court on 11<sup>th</sup> February, 2015 the Plaintiff states that the Nkararo adjudication section started in 1985 and he was the original allottee and occupant of plot No. 292. The Plaintiff too had produced a letter dated 22<sup>nd</sup> December, 2014 which is addressed To Whom It May Concern. The plaintiff has not called the maker of that particular document and/or an officer from the office of land adjudication section to confirm its contents. The Plaintiff has not stated whether the adjudication has been concluded and why he was not issued with title to the suit land.

The Plaintiff is seeking such drastic orders of eviction without proving ownership that he is indeed the lawful and/or right owner of the land and therefore has failed to proof his case on a balance of probability and I therefore decline to issue the order prayed for and dismiss the suit with no orders as to costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **3<sup>RD</sup>** day of **NOVEMBER, 2017**.

**Mohamed N. Kullow**

**Judge**

**3/11/17**

In the presence of:

N/A for the parties.

CA:Chuma