



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 100 OF 2016**

**PETER MOCHERE MABIRA.....PLAINTIFF**

**VERSUS**

**FRANCIS KIBET**

**CAROLYNE CHEVICH *alias* CHERUTO.....DEFENDANTS**

**JUDGMENT**

1. The plaintiff's suit proceeded to formal proof on 11/10/2017 as the defendant failed to respond to service of summons and plaint. The affidavit of service of Concepther Oduor, a process server dated 15/7/2016 shows that the defendants were served on 14/7/2016.
2. The plaintiff's case is that at all material times he was the registered owner of Land Title Number **Kitale Municipality No. 2116/352** measuring **0.0465 Ha.** being leasehold interest from the Government of Kenya for a period of 99 years with effect from 1/6/1981. The plaintiff avers that he was procedurally allocated the plot following an application which he made to the Commissioner of Lands in 1979. He thereafter paid all the dues required of him in respect of the plot and he eventually became registered as proprietor on 13/10/1981. He was issued with a Certificate of Lease. He has continued paying the statutory dues to the National Government and the County Government.
3. However the defendants have according to the plaintiff invaded the suit premises and erected illegal structures which they have leased out partly to third parties. They have continued to occupy some of those structures and, despite demand, they have neglected to vacate the premises. The plaintiff therefore seeks an order that the defendants, their agents, tenants or anyone claiming through them to be evicted from the suit land.
4. He also seeks that a permanent injunction do issue to restrain the defendants and others claiming under them from trespassing or interfering with the plaintiff's quiet possession of the suit premises, mesne profits, costs of the suit and interest on mesne profits and costs.
5. The plaintiff alone testified in his case and adopted his written statement in the record. He reiterated the contents of the plaint. He produced documents in proof of his claim. Among these were the Original Grant No. I.R. 35859 in respect of LR. No.2116/352, with a copy of Deed Plan attached, registered on 13/10/1981. He also produced a copy of the Official Search which showed that as at 13/10/2017 the suit premises were still registered in his name. The copy of Minutes of the Plot Allocation Committee for the meeting held on Friday 2/3/1979 was also produced. "**P. Exhibit 5(a)**", "**P. Exhibit 5(b)**" and "**P. Exhibit 5(c)**" are receipts showing that the plaintiff pays rates to the County Government of Trans-Nzoia in respect of the suitland.

6. After perusal of the documentary evidence produced by the plaintiff, and considering the plaintiff's oral evidence as well as the contents of the plaint, I am satisfied that he has proved his claim against the defendants on a balance of probabilities. His claim therefore succeeds.

7. I therefore enter judgment in favour of the plaintiff against the defendants jointly and severally and I grant prayers Nos. **(a)** **(b)** and **(d)**. Mesne profits are denied as they were not proved. The plaintiff shall however have interest on costs.

It is so ordered.

Dated, signed and delivered at Kitale on this **20<sup>th</sup>** day of **December, 2017**.

**MWANGI NJOROGE**

**JUDGE**

**20/12/2017**

Before - Mwangi Njoroge -Judge

Court Assistant - Isabellah

Ms. Mwemeke holding brief for Samba for plaintiff

N/A for the defendant

**COURT**

Judgment read in open court.

**MWANGI NJORoGE**

**JUDGE**

**20/12/2017**