



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT ANND LAND COURT AT KITALE**  
**LAND CASE NO. 49 OF 2015**

**SAMUEL WAFULA CHACHALIA .....PLAINTIFF**

**VERSUS**

<b>MARTHA WAIRIMO</b>	}	
<b>JAMES OMAYI</b>	}	
<b>STEPHEN SICHANGI</b>	}	..... <b>DEFENDANTS</b>
<b>NELSON WEKESA</b>	}	
<b>MARIA NEKESA</b>	}	

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

**INTRODUCTION**

1. The plaintiff is the beneficial owner of plot NO 70 at Kapkoi settlement scheme (suitland). This plot had been allotted to Jackson Kipnetich Komen by the Land and Adjudication Settlement Trans -Nzoia.

The plot was later sold to the plaintiff who attempted to take possession but was prevented from doing so by the son of the first defendant. The plaintiff filed this suit against the defendants seeking a declaration that the defendants are trespassers and a permanent injunction barring the defendants from interfering with the suitland. He also prayed for an eviction order and demolition of the structures on the suitland. The defendants who were duly served neither entered appearance nor filed defence. The case proceeded by way of formal proof.

**PLAINTIFF'S CASE**

2. The plaintiff testified that on 21/5/2014, he entered into a sale agreement with Jackson K.T. Komen for the purchase of the suitland which was 5 acres. He agreed to buy each acre at Kshs 225,000/- making a total of Kshs 1,225,000/-. When he went to the ground, he found the first defendant who was in possession of the same. The first defendant had sold portions of the suitland to the other defendants.

3. The Plaintiff went to the Lands office seeking to know the position of the suitland. He was informed that during allocation, there were a number of double allocations made. One of the plots affected was the suitland which had been allotted to both Jackson K.T. Komen and Martha Wairimu. He was informed that the problem regarding the suitland had been resolved by Martha Wairimu being given Plot No. 642.

The plaintiff was given a copy of a letter dated 9/3/2010 confirming that Martha Wairimu had agreed to take up plot No. 642 and that any payment she had made in respect of Plot No. 70 (suitland) those payments had been transferred to Plot No. 642.

4. The Plaintiff testified that the first defendant was utilising both the suitland and Plot No. 642 and that she had already sold portions of the suitland to the other defendants. When he went to the ground to commence construction, he was chased away by the first defendant's son. This is what prompted him to file this case.

### **ANALYSIS OF EVIDENCE**

5. The Plaintiff's evidence has not been controverted. The plaintiff produced a letter dated 9/3/2010 from the land and Adjudication and Settlement Department officer Trans-Nzoia directed to the Director of Land Adjudication and Settlement Nairobi. The letter was confirming cases of double allocation and that Martha Wairimu (first defendant) had agreed to take Plot No. 642 as Plot No. 70 (suitland) had already been document for Jackson K. Komen.

6. The Plaintiff also produced another letter of February 2015. This was a demand from the District Land Adjudication and Settlement officer Trans-Nzoia directed to Jackson Komen bringing to his attention that he was in arrears of Kshs 40,876. This confirms that the allottee of the plot is Jackson Komen who has already sold the same to the plaintiff.

7. The local administration is aware about the ownership of the plot. The area assistant chief wrote a letter confirming the ownership of the land. The assistant chief is aware that the first defendant was given Plot 642 but that his efforts to have the first defendant confine herself to Plot 642 and leave Plot 70 have not been heeded.

### **DECISION**

8. From the totality of evidence adduced, I find that the Plaintiff has proved his case to the required standard. I therefore grant him the following reliefs:-

1. A declaration that the defendants are trespassers to the suit land.
2. An order of eviction against the defendants from the suitland and demolition of any structures built thereon.
3. A permanent injunction restraining the defendants or their agents from interfering with the quiet enjoyment of the suitland by the plaintiff upon eviction.
4. The defendants shall bear the costs of this suit.

**Dated, signed and delivered at Kitale on this 10th day of March 2016.**

**E. OBAGA**

**JUDGE**

**10/3/2016**