



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT KISUMU

ELC CASE NO.119 OF 2015

CALEB ONYANGO OGADO.....PLAINTIFF

VERSUS

JUDITH ATIENO.....DEFENDANT

J U D G M E N T

1. The plaintiff, Caleb Onyango Ogando, sued the Defendant, Judith Atieno, for eviction and permanent injunction from his two parcels of land Kisumu/Kasule/2424 and 2425 and costs. The Defendant was served with the suit papers and affidavit of service filed but did not enter appearance nor file defence. The Plaintiff applied for interlocutory judgment vide their letter dated 11th September 2015 and the same was entered on 16th September 2015. The Plaintiff's counsel then set down the case for formal proof hearing which took place on the 23rd February 2016.

2. The Plaintiff testified as PW1 and told the court that after he bought land parcels Kisumu/Kasule/2424 and 2425 from one Ogingo, he found the Defendant had settled on plot number 2425. He requested the chief to assist him get vacant possession but the chief advised him to come to court. He then filed this suit.

3. The issues for determination are as follows:

- a) Whether the Plaintiff is the registered proprietor of land parcel Kisumu/Kasule 2425 and if so whether he acquired it vacant.
- b) Whether the Defendant has a right to remain on that land.
- c) Whether eviction and permanent injunction orders should issue against Defendant.
- d) Who pays the costs.

4. The court has considered the pleadings by the Plaintiff in his plaint dated 3rd March 2015 and his testimony in court and come to the following determination;

- a) That though the Plaintiff claimed to be the registered proprietor of **Kisumu/Kasule 2424** and **2425**, he did not avail documentary evidence to confirm ownership of parcel **Kisumu/Kasule/2424**. However, the Plaintiff clarified in his testimony in court that it was on parcel **2425** that he found the Defendant occupying. The Plaintiff became the registered proprietor of **Kisumu/Kasule/2425** on the 26th June 2013 as shown in the copy of the title deed annexed to his lists of documents.

b) That the pleadings and testimony of the Plaintiff confirms that the Defendant was already occupying land parcel **Kisumu/Kasule/24/25** when he acquired it. It was therefore upon the Plaintiff to take the legal steps to ensure the Defendant vacated from the land. The Plaintiff claims to have sought the assistance of the chief who referred him to come to court. There is however no documentary evidence to show whether a demand notice has ever been served on the Defendant before this suit was filed. The Plaintiff would therefore not be entitled to costs as the Defendant did not participate in proceedings and there is no evidence of demand notice having been served on the Defendant.

c) That it is only fair that the Defendant be served with notice to vacate within a specified period before being forcefully evicted in case she defaults.

5. That the Plaintiff has established his case against the Defendant on a balance of probability and judgment is entered in his favour as follows:

a) That the Defendant is hereby declared a trespasser on land parcel **Kisumu/Kasule/2425** and directed to vacate and give the Plaintiff vacant possession in 90 (ninety) days.

b) That should the Defendant fail to vacate within the time given in (a) above, she be forcefully evicted from land parcel **Kisumu/Kasule/2425**.

c) That the Plaintiff will bear his own costs.

It is so ordered.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 19TH DAY OF APRIL 2016

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr Emukule for Nyaoke for Plaintiff

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

19/4/2016

19/4/2016

S.M. Kiunja J

Oyugi court Assistant

Parties absent

Mr Emukule for Nyaoke for Plaintiff

Court: Judgment delivered in open court in presence of Mr. Emukule for Nyaoke for Plaintiff.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

19/4/2016