



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 95 OF 2008**

**MICHAEL KITIYO .....PLAINTIFF**

**VERSUS**

**LUCIA NJOKI .....DEFENDANT**

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

**I N T R O D U C T I O N**

1. The Plaintiff is the registered owner of LR Nos Kitale Municipality Block 3/975 and 976 (suitlands). The plaintiff brought this suit against the defendant seeking a declaration that he is the sole owner of the suitlands to the exclusion of the defendant and her family members and should be ordered to move out or be forcefully evicted. The plaintiff also prayed for a permanent injunction.

2. The defendant who had filed defence to the Plaintiff's claim through an advocate did not appear in court during the hearing. The hearing proceeded ex-parte after the court was satisfied that service was not only effected upon her advocate but also upon herself.

**PLAINTIFF'S CASE**

3. The plaintiff testified that prior to the suitlands being allocated to him, the husband of the defendant Michael Njoroge (Njoroge) had been given a temporary occupation licence by the defunct Kitale Municipal Council. The plaintiff upon allocation of the suitlands entered into an agreement with Njoroge who was to re-locate from the suitlands upon being paid compensation for the structure which he had erected between the suitlands. It was agreed by the plaintiff and Njoroge that the plaintiff was to pay Njoroge Kshs 170,000/- as compensation from the structure.

4. The plaintiff paid Njoroge Kshs 20,000/- on execution of the agreement to vacate. He later paid a further sum of Kshs 100,000/=. The balance of Kshs 50,000/= was to be paid upon Njoroge vacating the suitland. Njoroge however reneged on the agreement and refused to move out of the suitland as agreed. The plaintiff filed Kitale HCCC No 59 of 2008 against Njoroge seeking orders of eviction against him. Njoroge however died before the case could be heard. The plaintiff withdrew the case against Njoroge.

5. The plaintiff pleaded with the defendant to move out of the suitland but she refused to do so forcing him to file this suit. The defendant does not reside on the suitlands but she has leased out the structures which are in between the two properties.

6. The plaintiff has put up a school on the suitlands which also lies on his other property known as Kitale

Municipality Block 3/973 which is not a subject of this suit. The school is called Fairway Education Centre.

### **ANALYSIS OF EVIDENCE**

7. There is no doubt that the plaintiff is the registered owner of the suitlands. The plaintiff was allocated an unsurveyed plot under reference **No. 20089/XXIV on 21/2/1993**. The Plot was later surveyed and became **Plot No. Kitale Municipality Block 3/975**. A certificate of lease was duly issued on 29/11/2004 after he complied with all the requirements pertaining to the allocation. He produce the allotment letter, lease and certificate of lease as exhibit 1, 2 and 3 respectively.

8. The plaintiff also produced letter of allotment, lease and certificate of lease in respect of Kitale Municipality Block 3/976 as exhibit 4,5 and 6 respectively. The plaintiff also produced an agreement which he entered with Njoroge [exhibit 7]. The agreement clearly shows that Njoroge had agreed to move out of the suitlands upon being paid Kshs 170,000/-. The terms of Payment of the agreed sum are clearly spelt out in the agreement. Kshs 20,000/= was paid on execution of the agreement. The second payment of Kshs 100,000/= was made on 10/4/2006 as per the agreement produced as exhibit 8. The balance was to be paid after Njoroge had vacated the suitlands.

9. Njoroge refused to move out of the suitlands forcing the plaintiff to file suit against him. Upon the demise of Njoroge, the case against him was withdrawn as per the notice of withdrawal produced as exhibit 9.

10. Njoroge having died, he left the defendant who continued to occupy the structures on the suitlands until she moved out but leased out the structures to third parties. The evidence of the plaintiff has not been controverted. It is clear that the defendant has no interest in the suitlands. In her defence she is merely stating that the plaintiff unprocedurally obtained titles to the suitlands. There was no evidence adduced by her in support of her allegations. I find that the plaintiff has proved his case on a balance of probabilities.

### **DECISION**

11. A declaration is given that the Land comprised in Title **Nos Kitale Municipality Block 3/ 975 and 976** solely belong to the plaintiff to the exclusion of the defendant and her family members. An order is hereby given that the defendant and her family members or anybody claiming through her should move from the suitlands failure to which they should be forcefully evicted. A permanent injunction is hereby granted barring the defendant or anyone claiming through her from interfering in any manner from the suit lands once they are evicted. The defendant shall pay costs of this suit to the plaintiff.

Dated, signed and delivered at Kitale on this 31<sup>st</sup> day of October 2016.

**E. OBAGA**

**JUDGE**

**In the presence of M/s Mufutu for plaintiff.**

**Court Assistant – Isabellah**

**E. OBAGA**

**JUDGE**

**31/10/16**