



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 3 OF 2008**

**ZAKAYO K.BARGOIYET.....PLAINTIFF**

**VERSUS**

**CHARITY GATHONI.....DEFENDANT**

**JULIUS KOLIL..... 1<sup>ST</sup> THIRD PARTY**

**ZACHARY NDERITU..... 2<sup>ND</sup> THIRD PARTY**

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

**INTRODUCTION**

1. The plaintiff is the registered owner of **LR. No. Kitale Municipality Block 12/67** (suitland). The plaintiff filed this suit against the defendant seeking an order of eviction and demolition of a house the defendant had put up on the suitland. The defendant filed a defence and counter-claim in which she sought an order compelling the plaintiff and the first third party to transfer the title to the suitland into her name or in the alternative she be compensated the value of the house at **Kshs.3,300,000/=**.

2. The first third party was represented by the firm of J.K. Kiplagat & Co. Advocates who were allowed to cease acting for the first third party on 3/10/2013. The defendant's case was closed without any evidence being called after an application for adjournment was rejected. The second third party closed his case without calling any evidence.

**PLAINTIFF'S CASE**

3. The plaintiff testified that he was allotted an unsurveyed parcel of land within Kitale Municipality on **17/3/1992**. He paid the requisite amount and thereafter processed and obtained title to the suitland on **9/9/2004**.

4. Sometime in **2004**, he went to the suitland and found the defendant who had started putting up a house on the suitland. He asked the defendant to stop further construction but the defendant went on with the construction on the ground that she had purchased the suitland from the first third party.

5. The defendant later on urged the plaintiff not take any further steps in respect of the suitland as she looked for the first third party who had sold the suitland to her. The defendant later asked the plaintiff to move to court and file a case over the suitland.

**ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION**

6. There is no contention that the suitland is registered in the name of the plaintiff. A letter of allotment was produced as Exhibit 1. A certificate of official search was produced as Exhibit 5. The plaintiff is the registered owner of the suitland and there are no restrictions or inhibitions against the title.

7. The plaintiff and the defendant had agreed on the issues as follows:-

1. Whether the plaintiff is the bonafide owner of Kitale Municipality Block 12/67.
2. Whether or not the defendant has encroached and constructed a house on the plaintiff's land.
3. Whether the plaintiff is entitled to the orders sought in the plaint.
4. Who ought to pay costs of the suit.
4. Whether the defendant should be evicted from Kitale Municipality 12/67.

#### **Whether the plaintiff is the bonafide owner of Kitale Municipality Block 12/67**

8. The plaintiff has produced a letter of allotment. He also produced a receipt confirming that he paid the required fees. He went ahead and obtained title in his name. The defendant alleged in her defence and counter-claim that the plaintiff colluded with the first third party to process title in his name. There was no evidence adduced to back the allegations of fraud. I therefore find that the plaintiff is the bonafide owner of the suitland.

#### **Whether the defendant has encroached and constructed a house on the plaintiff's land**

9. The defendant does not deny that she has put up a house on the suitland. It is clear in her defence and counter-claim that there is a house which she put up on the suitland. This is why she is seeking compensation for the same. I therefore find that the defendant has trespassed and put up a house on the plaintiff's land.

#### **Whether the plaintiff is entitled to the orders in the plaint and whether the defendant should be evicted from the suitland.**

10. The plaintiff had adduced evidence that he is the registered owner of the suitland. This evidence has not been controverted. The plaintiff is asking for eviction order and demolition of the house on the suitland. There is no way a person can trespass on to another's land, put up a house and be left there. I therefore find that the plaintiff's prayers in the plaint are well founded and that the defendant should be evicted from the suitland.

#### **Who should pay costs?**

11. It is the defendant who caused the plaintiff to file this suit. There were attempts to settle this matter amicably as confirmed by the demand letter produced as Exhibit 4. The defendant refused to co-operate instead asking the plaintiff to have his day in court. The defendant should therefore bear not only the costs of the plaintiff's claim but also the costs of the counter-claim.

#### **DECISION**

12. The plaintiff has proved his case on a balance of probabilities. I grant the following orders:-

- i. An order of eviction of the defendant from Kitale Municipality Block 12/67 and demolition of the structures built thereon.**
- ii. An order dismissing the defendant's counter-claim.**

**iii. The defendant to bear the costs of the suit and counter-claim.**

Dated, signed and delivered at Kitale on this 2<sup>nd</sup> day of **November, 2016.**

**E. OBAGA**

**JUDGE**

In the presence of Mr. Tigogo for plaintiff.

Court Assistant – Isabellah

**E. OBAGA**

**JUDGE**

**2/11/2016**