



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
LAND CASE NO. 143 OF 2014

SIMON MOUNDE ONYAMBU ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

AGNES NAFULA ::::::::::::::::::::::::::::::: DEFENDANT

J U D G E M E N T

INTRODUCTION

1. The Plaintiff is the registered owner of LR NO. Trans- Nzoia/Kosprin/321. The plaintiff filed a suit against the defendant seeking the following reliefs;-
 - (a) Mandatory injunction directed against the defendant and or her family members and or servants on LR NO. Trans- Nzoia/Kosprin/321 requiring them to vacate forthwith.
 - (b) An order of eviction against the defendant and her family members and or servants from LR Trans Nzoia/Kosprin/321 and subsequent, demolition of temporary housing structures illegally erected by the defendant on the suit property.
 - (c) General damages for illegal trespass.
 - (d) Costs of the suit.
2. The defendant who was duly served with summons to enter appearance neither entered appearance nor filed defence. The hearing therefore proceeded by way of formal proof.

PLAINTIFF'S CASE

3. The Plaintiff testified that he applied to the Settlement Fund Trustee for allocation of a plot on 26/4/1996. His application was successful and he was given a letter of offer on 26/4/2001. He paid all the requisite fees payable. He then obtained a ground report from the Settlement office which confirmed that there was no one on the ground. He thereafter processed and obtained a title deed for the property.
4. In 2009, the defendant invaded the plot and has since remained on it to-date. He reported the invasion to the local chief who wrote a letter to the defendant asking her to move out of the

plaintiff's land. The chief then wrote another letter asking the plaintiff to take possession of the land. The defendant then moved to court and filed Kitale HCCC NO. 44 of 2009 which was later dismissed. He now prays for eviction order and general damages as well as costs of the case.

ANALYSIS OF EVIDENCE

5. The Plaintiff produced a letter of application dated 26/4/1993 exhibit 4. He also produced a letter of offer dated 26/4/2001 exhibit 5. The Plot had been charged. When the plaintiff paid all the required charges he was given a discharge of charge exhibit 6. On 8/3/2009 the plaintiff obtained title deed to the land exhibit 2. He also produced a bundle of receipts confirming that he paid all the monies required by the Government exhibit 8.
6. The plot is still registered in his name as confirmed by an official search carried out on 22/1/2015 exhibit 1(a). There are no encumbrances registered against the title. On 6/3/2009 the defendant had agreed to move out of the suit property on condition that the plaintiff paid her Kshs.9,000/= which she had used to plough the land. This was before the area chief as confirmed in exhibit 9.

DETERMINATION

7. It is clear from the evidence by the plaintiff that he is the legal owner of the suit property. His evidence has not been controverted. I find that the plaintiff has proved his case to the required standards. The plaintiff has been utilising the land which is 5 acres for six years. If the plaintiff was to lease out the farm at an average price of Kshs.3,000/= per acre for 6 years, he will have got Kshs.1,080,000/=. The defendant is residing on the land. She must be occupying about an acre and utilising 4 acres. I therefore assess general damages as follows; $3,000/= \times 4 \times 12 \times 6 = 864,000/=$. I award the plaintiff Kshs.864,000/= general damages for trespass. An order of eviction is hereby given against the defendant from the suit land. She is given 3 months within which to voluntarily move or be evicted therefrom without recourse to court for that purpose. The plaintiff shall have costs of the suit.

Dated, signed and delivered at Kitale on this 16th day of February, 2015.

E. OBAGA

JUDGE

In the presence of Mr Bororio for Mr Morara for Plaintiff. Court

Clerk – Kassachoon.

E. OBAGA

JUDGE

16/2/2015