



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 60 OF 2014**

**SHADRACK C. CHESEREK.....PLAINTIFF**

**VERSUS**

**KIPSEREM MENGICH.....1ST DEFENDANT**

**PETER KIMARU KENEL.....2ND DEFENDANT**

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

**INTRODUCTION**

1. The plaintiff is the beneficial owner of **Plot No. 555** at **Milimani Settlement Scheme** (suit land). The two defendants are brothers. The plaintiff brought this suit against the defendants seeking a declaration that he is the legal owner of the suit land and that the defendants should be evicted therefrom and pay him mesne profits from the year 2008.
2. At the hearing of this suit on 28/5/2015 the defendants advocates applied for adjournment through another counsel on the ground that he had lost touch with the defendants and that he was in the process of preparing an application to cease acting for the defendants. The application for adjournment was rejected when the plaintiff's advocate brought to the attention of the court that the defendants were actually present in court. When the case was called out for hearing, the defendants were not there. The hearing therefore proceeded ex-parte.

**PLAINTIFF'S CASE**

3. The plaintiff testified that he applied for allocation of land to the Settlement Fund Trustee in the year 2000. His application was successful and he was given a letter of offer dated 5/12/2000. He was allocated Plot No. 555 at Milimani Settlement Scheme. The plot was **2 ½ acres**. He paid the requisite fees after which he was taken to the ground and shown his land.
4. The plaintiff took possession and constructed a house on the suit land. The defendants came and chased him away and took possession. He testified that the second defendant had been allocated **Plot No. 579** at the same settlement scheme but that he does not utilize the same. The second defendant has allowed his brother the first defendant who is on the land. The plaintiff went and complained to the land adjudication and settlement office who wrote confirming that he is the allottee of the suit land and that the second defendant has nothing to do with the suit land and should vacate the same.

**ANALYSIS OF EVIDENCE**

5. The plaintiff produced a letter of offer dated 5/12/2000 [Exhibit 1]. According to the letter of offer, the plaintiff was supposed to clear the full purchase price within 90 days. He however paid Kshs.19,171/= on 22/8/2008 as per copy of receipt produced as Exhibit 2. On 29/10/2012 the Ministry of Lands demanded for arrears which he owed the ministry. He produced a copy of the demand letter as Exhibit 3. On 6/2/2013 he paid Kshs.5,195/= as per receipt produced as Exhibit 4.
6. On 11/4/2013 the District Land Adjudication and Settlement Officer wrote to the Director of Land Adjudication and Settlement Nairobi stating that the second defendant had been allocated Plot No. 579 but that it was later discovered that the same had been reserved as a quarry pit. He was asking the Director of Land Adjudication to verify the files in respect of Plot No. 555 and 579. The plaintiff produced this letter as Exhibit 5. A response from the Director of Land Adjudication and Settlement was written on 13/5/2013 (Exhibit 6). The Director confirmed that Plot No. 555 (suit land) had been allocated to the plaintiff.
7. It is therefore clear that the suit land was allocated to the plaintiff. There are documents filed in the file which shows that the second defendant had been allocated Plot No. 579 but was later given Plot No. 555. The final records are kept in Nairobi in the office of the Director of Land Adjudication and Settlement. The Director has confirmed that the plot was allocated to the plaintiff. This has been confirmed by the letter produced as Exhibit 6. The second defendant's argument that the suit land was not available for allocation in the year 2000 has no basis.

### **DECISION**

8. I find that the plaintiff's evidence which has not been controverted has established that the plaintiff is the legal owner of the Plot No. 555 at Milimani Settlement Scheme. I grant the following reliefs:-
  - (a) A declaration that the plaintiff is the lawful owner of **Plot No. 555 at Milimani Settlement Scheme** and that the defendants are not entitled to use the same.
  - (b) An order of eviction against the defendants from **Plot No. 555 at Milimani Settlement Scheme**.
  - (c) A permanent injunction restraining the defendants or their agents from interfering with **Plot No. 555 at Milimani Settlement Scheme** once they are evicted.
  - (d) Costs of this suit.

The prayer for mesne profits is rejected as there was no basis laid for the same.

Dated, signed and delivered at Kitale on this **2nd** day of **July, 2015**.

**E. OBAGA**

**JUDGE**

In the presence of Mr. Chebii for Mr. Yano for Plaintiff and Defendants.

Court Clerk – Isabellah.

**E. OBAGA**

**JUDGE**

**2/7/2015**