



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

ENVIRONMENT & LAND CASE NO. 5 OF 2014.

KOKWOMOGH MARIKAPEL :::::::::::::::::::::::::::::: PLAINTIFF.

VERSUS

MUSA TINYANG :::::::::::::::::::::::::::::: DEFENDANT.

J U D G M E N T.

INTRODUCTION.

1. The plaintiff is the allottee of plot No. 604 at Chepchoina Settlement Scheme Phase 1. The plot is 3.74 hectares which is about 9 ½ acres. On 14/1/2014 the plaintiff filed this case against the defendant in which he sought the following reliefs:-

(a) A declaration that the plaintiff is the sole allottee of plot No. 604 in Chepchoina Settlement Scheme

Phase 1 and further that the defendant has trespassed in the said plot.

(b) A temporary and permanent injunction.

(c) General and exemplary damages for trespass.

(d) Ksh. 54,000/= for loss of user during 2013.

(e) Costs.

(f) Interest.

2. The defendant who was duly served neither entered appearance nor filed defence. He appeared in court once and was advised to file defence within 7 days. He did not. The hearing therefore proceeded ex-parte by way of formal proof.

PLAINTIFF'S CASE.

3. The plaintiff testified that he was allocated plot 604 Chepchoina Settlement Scheme Phase One by the Government (suit land). He was given a letter of allotment on 15/12/2009. The suit land is about 9 acres. He paid the required amount and took possession and put up a house. In March, 2013, the defendant who is an administration police service corporal came in the company of four administration police officers who chased him away from the suit land. The defendant then caused him to be placed in cells after which he ploughed the suit land and planted maize which he

- later harvested.
4. The plaintiff testified that if he were to lease all the 9 acres at Ksh. 6,000/= he would have got Ksh. 54,000/=.

ANALYSIS OF EVIDENCE.

5. The plaintiff produced a letter of allotment (Exhibit 1). He also produced a receipt which was issued to him upon payment of Ksh. 5,120/= being 10% deposit as required [Exhibit 2]. When the defendant chased him away from the suit land, he went to his lawyer who wrote to the settlement office to confirm who was the allottee of plot 604 at Chepchoina Settlement Scheme Phase 1. The settlement office wrote a letter confirming that the plaintiff was the allottee. These letters were produced as exhibit 3 and 4 respectively. The plaintiff's lawyer wrote to the defendant asking him to desist from interfering with the plaintiff's land. This letter was produced as [Exhibit 5.]. The plaintiff obtained an injunction and this prevented the defendant from ploughing the suit land this year.
6. The documents produced by the plaintiff show that he is the lawful allottee of the suit land. It is apparent that the defendant had no defence to the plaintiff's claim. This is why he never bothered to enter appearance or even file defence even after the court gave him time to do so. The defendant's conduct of forcefully ploughing and planting on the plaintiff's land is an act of impunity and misuse of his position as an administration police service officer. He ensured that the plaintiff was in cells as he ploughed the land. The defendant's acts not only call for general damages for trespass but also calls for exemplary damages. I find that the plaintiff has proved his case on a balance of probabilities. The plaintiff has testified that if he would have leased out the 9 acres, he would have got Ksh. 6,000/= per acre. This translates to Ksh. 54,000/=. I will give him this for loss of user of his land for the period of 2013. The plaintiff cannot get general damages in addition to the loss which has been ascertained. What he can only get is exemplary damages to compensate him for the crude manner in which he was chased away from his land. He was even put in cells. I award him Ksh. 50,000/= as exemplary damages. I therefore give the following reliefs:-

(a) A declaration that the plaintiff is the sole allottee of plot No. 604 in Chepchoina Phase 1 Settlement Scheme.

(b) A permanent injunction restraining the defendant from in any way interfering with the plaintiff's user of his plot.

c. Ksh. 54,000/= for loss of user of the land in the year 2013.

d. Exemplary damages of Ksh. 50,000/=.

(e) Costs of the suit and interest on (c) and (d) to be calculated from the date of this judgment.

[Dated, signed and delivered at Kitale on this 18th day of December, 2014.]

E. OBAGA.

JUDGE.