



Case Number:	Land Case 135 of 2013
Date Delivered:	30 Sep 2015
Case Class:	Civil
Court:	High Court at Kitale
Case Action:	Judgment
Judge:	Elija Ogoti Obaga
Citation:	David Kisiero Kiboi v Board of Governors Saboti Sec School & 2 others [2015] eKLR
Advocates:	Mr. Ingosi for Mr. Mwinamo for Plaintiff
Case Summary:	-
Court Division:	Land and Environment
History Magistrates:	-
County:	Trans Nzoia
Docket Number:	-
History Docket Number:	-
Case Outcome:	Judgment entered for the plaintiff against the defendant
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 135 OF 2013

DAVID KISIERO KIBOI PLAINTIFF

VERSUS

BOARD OF GOVERNORS SABOTI SEC SCHOOL.....1ST DEFENDANT

ATTORNEY GENERAL2ND DEFENDANT

MINISTRY OF LANDS AND SETTLEMENT3RD DEFENDANT

J U D G M E N T

INTRODUCTION

1. The plaintiff is the registered owner of **LR.NO. Saboti/Saboti Block 6/ Sukwo/30** (Suit land). The plaintiff brought this suit against the defendants seeking the following reliefs:-

(a) An order of eviction against the first defendant from **LR.No. Saboti/Saboti Block 6/Sukwo/30** and restitution of the plaintiff to the land parcel and in the alternative the plaintiff be granted an amount of money equivalent to 7.6 acres within Kitale Settlement Scheme.

(b) Mesne profits for the years the plaintiff has not utilized,land parcel **No.Saboti/Saboti Block 6/Sukwo/30**.

(c) Any other or further relief that the Honourable court may deem fit to grant.

2. All the three defendants were duly served with Summons to enter appearance and file defence but the defendants only entered appearance but never filed a defence. The plaintiff obtained interlocutory judgment against the first defendant as well as the second and third defendants upon the court granting leave to the plaintiff to enter judgment in default of defence against the second and third defendants.

3. In one occasion **Mr. Kuria** a state counsel indicated to court that he was not opposed to the plaintiff's claim but that he wanted to seek instructions from his clients. Nothing came out after that. The plaintiff fixed this case for formal proof.

PLAINTIFF'S CASE

4. The plaintiff testified that he is the registered owner of the suit land which measures **1.538** hectares. He produced a copy of certificate of title deed as exhibit 1. On **14.10.2002**,the plaintiff and others held a meeting with the parents of Saboti Secondary School who wanted to take over the plaintiff's land as well as that of others in return for the plaintiff and others being given alternative land at **Kitale Settlement Scheme**. The minutes of the meeting were produced as exhibit 2.

5. The plaintiff agreed to surrender the suit land in exchange of **7.6 acres** at Kitalale Settlement Scheme. On **28.8.2002** he received a letter (exhibit 3) from the third defendant informing him that he had been compensated with plot No. **1119** measuring **7.6 acres** at **Kitalale Settlement Scheme**. He was asked to make arrangements with the District Surveyor Trans- Nzoia who was to show him the land on the ground. He went to the ground only to realize that plot No. **1119** was non existent at kitalale Settlement Scheme.

6. He has been pursuing compensation since then in vain. On **4.9.2013**, he wrote a demand letter to the first defendant through his advocate exhibit 4(a) and another one to the second defendant on the same date (exhibit 4(b)). He notified the two defendants that he was going to seek court redress if they did not take action. The demand letters never elicited any response forcing the plaintiff to file this suit in which he seeks the reliefs enumerated herein-above.

ANALYSIS OF EVIDENCE

7. The evidence of the plaintiff is uncontroverted. A copy of title which he produced confirms that he is the registered owner. There is no doubt that he gave the suit land to Saboti Secondary School. There is a letter from the third defendant which confirms that the plaintiff had been compensated with plot No. **1119** measuring **7.6** acres at **Kitalale Settlement Scheme**. He was to be shown the plot by the **District Surveyor Trans-Nzoia**. According to the evidence of the plaintiff which is not challenged, the plot which he was to be given at Kitalale Settlement Scheme was non existent.

8. The plaintiff had sought for an eviction order with the alternative of compensation in monetary terms equivalent to the value of land at Kitale Settlement Scheme. The plaintiff voluntarily surrendered the suit land to the first defendant. The first defendant took possession of the suit land in 2002. The school has been on the suit land since then. It will not be fair to evict the first defendant from the suit land. The first defendant is a public school benefiting hundreds of students from the local community.

9. The plaintiff had asked for compensation in monetary terms equivalent to **7.6 acres at kitalele Settlement Scheme**. The plaintiff did not testify on the rates of land at Kitalale Settlement Scheme. It is therefore impossible for the court to state or award a specific figure to the plaintiff. However this notwithstanding, the fact remains that the plaintiff surrendered his land to the school and he deserved compensation. The compensation he was entitled to was revealed to him. This was 7.6 acres. Since he was not given, he is willing to take an amount equivalent to 7.6 acres at Kitalale Settlement Scheme. I do not know what the rates of land are at Kitalale Settlement scheme. I will in the circumstances allow the plaintiff's claim for compensation in monetary terms of an equivalent of 7.6 acres at the current market rates of land at Kitalale. The rates of compensation will be rates prevailing at the time of settlement of the plaintiff's claim by the defendants. This shall be so because the plaintiff has been kept out of his land for long.

10. On the issue of mesne profits, I do not find that there is any basis for the same. The same is rejected. The plaintiff will be cushioned by being given money equivalent of 7.6 acres at the prevailing market rates of land of Kitalale Settlement Scheme.

DETERMINATION

11. I find that the plaintiff is entitled to compensation. I order that he be compensated in monetary terms equivalent to 7.6 acres at prevailing market rates of land at Kitalale Settlement Scheme. This judgment is entered jointly and severally against the defendants. The defendants shall pay costs of this suit to the plaintiff.

Dated, signed and delivered at Kitale on this 30th day of September 2015.

O. OBAGA

JUDGE

In the presence of Mr. Ingosi for Mr. Mwinamo for Plaintiff.

Court Assistant – Winnie.

E. OBAGA

JUDGE

30/9/2015



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