

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

ELC CASE NO. 131 OF 2017

CHRISTOPHER OKWII IJIRIMANI.....PLAINTIFF

= VERSUS =

ALFRED SOKONI EKIRUSUT..... DEFENDANT

J U D G M E N T

1. The plaintiff filed a suit against the defendant via a plaint dated 11th July 2017 seeking the following orders against the defendant;

a) Eviction compelling the defendant to forcefully be removed on LR. BUKHAYO/LUPIDA/182.

b) Any other relief that this Honourable Court may deem fit and expedient to grant.

c) Costs and interests of this suit.

2. The defendant was duly served with summons to enter appearance in this suit but he entered appearance and filed a defence to the claim. He was again served with today's date on 7th October 2021 and he has not shown up. Essentially, the plaintiff's claim is undefended as there is no evidence presented to give the status of the application commenced by the defendant to revoke the certificate of grant issued to Margaret Ajiliti Odionyi who sold the land to the plaintiff herein.

3. The plaintiff pleaded that he bought the land from the administrator of the estate of Busuru Kinusutu and followed due process in obtaining his title. Although the defendant pleaded that such acquisition was fraudulent, the particulars of the fraud pleaded were not proved since the defendant did not tender any evidence.

4. Currently, the plaintiff is the registered owner of the suit as shown in the copy of title produced in court by the list of documents filed on 11th July 2017. The defendant has also not appeared in court to tender evidence in support of his trusteeship claim.

5. Trust is a question of fact which must be proved by evidence and the burden was on the defendant who is challenging the plaintiff's title to discharge. In the absence of evidence vitiating the plaintiff's title, I hold that his rights bestowed under the provisions of section 24 and 25 should be preserved and protected.

6. Consequently, I enter judgment for the plaintiff as prayed in the plaint in the following terms;

a) The defendant is granted 60 (sixty) days from the date of service of this decree upon him to surrender vacant possession of the suit title Bukhayo/Lupida/182.

b) In default of complying with (a) above, the plaintiff is at liberty to evict the defendant using lawful means.

c) Each party to meet their respective costs of the suit.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 10TH DAY OF NOVEMBER 2021.

A. OMOLLO

JUDGE