



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**ELC CASE NO. 246 OF 2014**

**JEDIDA MWENDIA NJUKI.....PLAINTIFF**

**VERSUS**

- 1. PAUL MUGO NGUKU.....1<sup>ST</sup> DEFENDANT**
- 2. PETER KAMAU NGUKU.....2<sup>ND</sup> DEFENDANT**
- 3. JOHN NJERU NGUKU.....3<sup>RD</sup> DEFENDANT**
- 4. SIMON NYAGA NGUKU.....4<sup>TH</sup> DEFENDANT**
- 5. KARIUKI NYAGA MACEMO.....5<sup>TH</sup> DEFENDANT**
- 6. NJERU NYAGA MACEMO.....6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

The plaintiff herein **JEDIDA MWENDIA NJUKI** is the wife and legal representative of the Estate of **JUNIUS NJUKI MACHOCHO** (deceased) who was at all time the absolute registered proprietor of parcels of land No. MBEERE/KIAMBERE/149, 3276, 3277, 3278, 3279, 3817 and 2872 (the suit land). She has filed this suit claiming that the defendants have illegally and without colour of right occupied the suit land and have refused to offer amends despite demand and notice of intention to sue. The plaintiff has therefore filed this suit seeking the following remedies:-

- 1. *That the 1st to 6th defendants do remove themselves, their families, agents and properties from the parcels of land No. MBEERE/KIAMBERE/149, 3276, 3277, 3278, 3279, 3817 and 2872 within 30 days from the date of this judgment and in default, the defendants, their family members, agents and properties be forcefully evicted from the parcels of land within 90 days from the date of the judgment.***
- 2. *The 1st to 6th defendants by themselves, their family members and agents be permanently restrained from re-entering upon, occupying and/or utilizing land parcels No. No. MBEERE/KIAMBERE/149, 3276, 3277, 3278, 3279, 3817 and 2872 or in any other way whatsoever interfering with the said land.***

According to the record herein, all the six (6) defendants were served with copies of summons to enter appearance, plaint, verifying affidavit and the plaintiff's list of witnesses and documents on 26th July 2014 at their homes in Kiambere new site village at around 11.00 a.m. They all accepted service but

refused to sign. On 24th April 2015, counsel for the plaintiff **ROSE W. NJERU** advocate filed a request for interlocutory judgment which was entered by the Deputy Registrar on 5th May 2015 and on 10th May 2016, this matter was placed before me for formal proof during my visiting sessions at the Embu Court.

The plaintiff testified that she is a farmer aged 70 years and has obtained a limited grant of letters of administration in respect of the Estate of her husband **JULIUS NJUKU** which she produced – Exhibit 1. She added that the suit land was sold to her and her late husband and that he is the registered owner thereof as per the official certificate of search – Exhibit 2 (a) to 2 (g). She could not however remember when the land parcels were purchased but added that the suit land was purchased from one **NGUKU MACHEMO** who is the father to the 1st to 4th defendants while the 5th and 6th defendants are sons to the brother of the said **NGUKU MACHEMO**. The plaintiff told the Court that there have been previous objection proceedings and a Minister’s Appeal Case No. 264 of 2001 which the defendants filed and lost over the suit land – Exhibits 3, 5 and 6. The 1st defendant also filed Judicial Review proceedings in **KERUGOYA ELC JUDICIAL REVIEW APPLICATION No. 11 of 2013** which he also lost – Exhibit 7. Despite several demand notices – Exhibit 4- the defendants have refused to give access to the plaintiff hence this suit.

I have considered the pleadings herein and the plaintiff’s un-controverted oral and documentary evidence.

It is not in dispute that the plaintiff obtained a limited grant of letters of administration on 6th September 2011 for purposes of filing this suit (Exhibit 1) on behalf of the Estate of her deceased husband. It is also not in dispute that the suit land is registered in the names of the plaintiff’s late husband **JUNIUS NJUKI MACHOCHO** - Exhibit 2 (a) to 2 (g). There is also evidence that demand notices have been issued to the defendants to cease from entering the suit land or blocking the access road passing through the said land to Ndithiri Primary School. The Court has not been shown any responses to the said demand notices (Exhibit 4) demonstrating that the defendants have any rights to the suit land. As no defence was filed by the defendants though duly served with the plaint, the Court can only conclude that the defendants have no reasonable explanation for their continued trespass on the suit land. The deceased **JUNIUS NJUKI MACHOCHO** as the registered proprietor of the suit land enjoyed all the rights and privileges that belong or are appurtenant thereto by virtue of the provisions of **Section 24 of the Land Registration Act** which rights his legal representative being the plaintiff herein is obliged to protect. Such right includes ejecting any trespass on the suit land. And since this suit was not defended, this Court can only arrive at the conclusion that the defendants are trespassers on the suit land and must be ejected therefrom as sought in the plaint.

Therefore, believing the plaintiff’s un-controverted oral and documentary evidence, this Court finds that the plaintiff has proved her case as required in law and is entitled to the orders sought by her in the plaint.

Judgment is therefore entered for the plaintiff against the defendants jointly and severally as per the plaint herein.

**B.N. OLAO**

**JUDGE**

**9<sup>TH</sup> JUNE, 2016**

**Judgment delivered, dated and signed in open Court this 9<sup>th</sup> day of June 2016.**

Mr. Ndege for Ms Njeru for the Plaintiff present

Defendants absent

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**9<sup>TH</sup> JUNE, 2016**