



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CIVIL SUIT NO.321 OF 2012**

**DANIEL KYALO LUA**

**WAMBUA LUA (Suing as Administrators to the Estate of the  
late JAMES LUA MAIA) ..... PLAINTIFFS**

**VERSUS**

**RICHARD MUINDI ..... DEFENDANT**

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

1. By a **Plaint** filed on **24.8.2012** the Plaintiff instituted the instant suit claiming the following reliefs:
  - a. A declaration that Land Parcel No.12 Kilome Land Adjudication Section forms part of the estate of James Lua Maia (deceased) and that the Defendant is an intermeddler in the estate.
  - b. An order of eviction of the Defendant from Land Parcel No.12 Kilome Land Adjudication Section.
  - c. A permanent injunction restraining the defendant, his agents, servants and/or any other persons acting on his behalf from occupying, using or in any way interfering with the suit land.
  - d. Compensation for the felled trees at the value of KShs.555,349/-.
  - e. Mesne profits
  - f. Costs of this suit and
  - g. Interest on (d) and (e)
  - h. Any other or further relief as this Honourable Court may deem fit and just to grant.
  
2. On 2.4.2013 the Defendant was served with summons but he never entered appearance or file defence. This prompted the Plaintiff to request judgment on 17.9.2013 and thereafter the matter came for formal proof on 11.11.2014. The Plaintiff pleads that Land Parcel No.12 Kilome Adjudication Section hereinafter referred to as suit land is registered in his deceased father's name; though he is appointed administrator of his father's estate and there is a pending HC. Succ. No.150/1992, in Machakos awaiting distribution of estate which is set to be undertaken.
  
3. However, in 2007 the Defendant entered suit land and commenced unlawfully committing the acts of waste, trespass, destruction including cutting down trees, cultivation and planting of Napier grass. He is grazing, constructing green house, fish pond and erecting buildings thereon. The damage to the land and the trees and vegetation was assessed at KShs.555,349/-. The Plaintiff therefore seeks the prayers in the Plaintiff.

4. During hearing, the Plaintiff produced report by Forestry Department Kilungu/Kilome to support his claim for damages amounting to 555,349/-. The Plaintiff also produced Letter of Administration to confirm that he is the appointed administrator of the estate of James Lua the registered owner. The Plaintiff procured land Adjudication Officer consent on 27.4.2011 to institute instant suit against the Defendant. Prior to the grant of consent the Defendant had been ordered by the Land Adjudication Officer vide letter dated 29.11.2010 to vacate suit land.

5. The Defendant has failed to defend suit despite service of summons to justify his occupation and user of the suit land. The court thus finds no reason to deny the Plaintiff the benefit of doubt and hold that the Plaintiff has proved the Defendant liability to the claim herein on a balance of probabilities as required by the law. The estate is yet to be distributed and thus subject of HCC. Succ. No.150/92 under Section 79 of Cap 160. The Administrator is a personal representative of the deceased for all purposes of grant and property of deceased vest in him subject to limitations imposed by the grant.

6. Section 82 of Cap 160 stipulates that, a personal representative is empowered to enforce by suit or otherwise all causes of action which survive deceased or arise out of his estate. It is trite law that special damages, including mesne profit have to be pleaded and proved. The Plaintiff has pleaded claim of damages of KShs.555,349 and supported same by way of assessment report. As for mesne profit, the Plaintiff has not proffered any material to lay the basis of grant of the same and thus same remains unproved.

7. The court thus makes the following orders:

1. The following prayers in the Plaint are granted (a), (b), (c), (d), (f) and (h).

**Dated and Delivered at Machakos this 13<sup>th</sup> day of March, 2015.**

**CHARLES KARIUKI**

**JUDGE**