



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO.56 OF 2015**

**(formally Kilifi SRMCC No. 185/11)**

**FLORENCE KABICHANA KALU.....PLAINTIFF**

**=VERSUS=**

**JOSEPH WAMBUA.....DEFENDANT**

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

1. This matter was filed in the Senior Resident Magistrate's court, Kilifi, on 27<sup>th</sup> July 2011. On 30<sup>th</sup> August 2012, this court allowed the transfer of the suit to this Court.
2. In the Plaint, the Plaintiff averred that she is the rightful owner of parcel of land number C.R/7620/78 subdivision number 214843 and that in the year 2003, the Defendant invaded her parcel of land and started creating structures thereon.
3. In the Plaint, the Plaintiff is praying for a mandatory injunction to order the Defendant to pull down the structures that he has built on the suit property.
4. The Defendant filed a Defence on 13<sup>th</sup> October 2015 in which he denied the Plaintiff's assertions.
5. When the matter came up for hearing on 21<sup>st</sup> September 2015, neither the Defendant nor his advocate was in court.
6. The Plaintiff, PW1, informed the court that she is the registered proprietor of the suit property. The Plaintiff produced in evidence the original certificate of title in respect of plot number CR 4487.
7. According to PW1, when her husband died, the Defendant invaded her land and put up a small structure.
8. PW1 informed the court that her pleas to the Defendant to vacate her land has not been successful and she wants the court to grant her the order of eviction.
9. The Defendant has not controverted the Plaintiff's evidence that she is the registered proprietor of the suit property.
10. The Plaintiff produced in evidence the certificate of title for CR 43779 which shows that she was

registered as the proprietor on 25<sup>th</sup> April 2008.

11. In the absence of evidence to show the proprietary interest of the Defendant in the suit property, I find and hold that the Plaintiff has proved her case on a balance of probabilities.

12. For those reasons, I allow the Plaint dated 27<sup>th</sup> July 2011 in the following terms:

**(a) A mandatory injunction be and is hereby issued ordering the Defendant to pull down and remove from the Plaintiff's parcel of land being subdivision number 214843 registered in the land office as CR 7620/78 all buildings, structures and constructions and if not the Plaintiff to pull down those structures at the Defendant's costs.**

**(b) The Defendant, his agents, servants or employees be and are hereby restrained from interfering, trespassing or dealing in any manner whatsoever with the CR. NO. 7620/78 subdivision number 214843.**

**(c) The Defendant to pay to the Plaintiff the costs of the suit.**

Dated and delivered in Malindi this 13<sup>th</sup> day of **November** 2015.

**O. A. Angote**

**Judge**