



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND DIVISION**  
**ELC. CASE NO. 681 OF 2013**

**MARY NJAMBI KIMANI.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**SIMON KABUNYI KIMANI.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**(SUING AS JOINT LEGAL REPRESENTATIVES OF  
THE ESTATE OF KENNETH KIMANI KABUNYI)**

**VERSUS**

**SIMON WANDETO.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**EUNICE WAMBUI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**JOSPHAT IKUA MWANGI.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**JUDGMENT**

This suit was filed by way of Plaint filed on 10<sup>th</sup> June 2013 by which the Plaintiffs sought for judgment to be entered against the Defendants compelling them to give the Plaintiffs vacant possession of the parcel of land known as Limuru/Rironi/T.416 (hereinafter referred to as the “suit land”), for costs of this suit and for any other relief that this court may deem just to grant.

After the Defendants failed to enter appearance after being served with summons, the Plaintiffs requested for interlocutory judgment to be entered against them. This was done on 21<sup>st</sup> August 2013 and the matter proceeded for formal proof on 10<sup>th</sup> June 2014.

At the hearing of this suit on 10<sup>th</sup> June 2014, the Plaintiff testified that she together with her son, the 2<sup>nd</sup> Plaintiff, had been appointed as the administrators of the estate of her late husband, Kenneth Kimani Kabunyi (the “Deceased”). She produced a copy of her Grant of Letters of Administration. She further testified that she was bringing this suit on behalf of the estate of the Deceased who was the registered proprietor of the suit land. In support of that assertion, she produced the original title deed and a current Certificate of Official Search, all of which bore the names of the Deceased. She further testified that the Defendants entered into the suit land and live there. She further stated that her children wish to develop the suit land but the Defendants have refused to vacate it. She therefore sought an eviction order.

The issue that emerges for my determination is whether the Plaintiffs have proved that the Deceased was the registered proprietor of the suit land and whether they are entitled to the order of eviction which they seek. The Plaintiffs produced to this court the original title deed for the suit land and Certificate of Official Search, both of which bear the names of the Deceased. **Section 26(1) of the Land Registration Act** provides as follows:

***“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner , ... and the title of that proprietor shall not be subject to challenge, except-***

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or***
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”***

Going by this legal provision, it is quite clear that having produced the certificate of title to this court whose validity has not been challenged under any of the grounds set out, this court is duty bound to find that the Deceased was the absolute and indefeasible owner of the suit land and I do so find. The suit land therefore forms part of the estate of the Deceased which the Plaintiffs administer.

The rights of a registered proprietor of land are set out in **Sections 24 and 25 of the Land Registration Act** as follows :-

***“24. Subject to this Act—***

***(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and***

***(b) -***

***25. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject***

***—***

- 1. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and***

- 2. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.”***

One of the main privileges belonging to land is the right to vacant possession of the land to the exclusion of all others. As duly appointed administrators of the estate of the Deceased, the Plaintiffs are clearly entitled to this right and the continued occupation of the suit land by the Defendants clearly contravenes that very fundamental right and privilege. I therefore have no difficulty in finding that indeed the Plaintiffs right of exclusive possession of the suit land has been contravened by the Defendants unlawfully. I therefore enter judgment in favour of the Plaintiffs as prayed by the Plaintiffs and order that the Defendants pay the Plaintiffs the costs of this suit.

**DELIVERED AND SIGNED IN NAIROBI THIS 24<sup>TH</sup> DAY OF OCTOBER 2014.**

**MARY M. GITUMBI**

**JUDGE**