

No.32/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

ELC CASE NO. 17 OF 2012

BONIFACE NYANGE MBWIKO PLAINTIFF

VERSUS

THADDEUS KATUVI DEFENDANT

J U D G M E N T

1. By a Plaintiff dated 27.1.2012 the Plaintiff filed the suit herein claiming:

- a. **Permanent injunction to restrain Defendant, his servants and/or agents from building or erecting any structures in front of LR. No. Matungulu/Kyaume/2469.**
- b. **The structure so erected be demolished.**
- c. **Costs of the suit.**

2. The Defendant was served with summons on the 18.2.2012 but he failed to file defence and the judgment was entered against him. The Plaintiff during the formal proof hearing produced copy of the title deed P. Exhibit 1 after showing the court the original to prove ownership of the subject parcel of land.

3. The Plaintiff testified that the defendant built a structure in form of a kiosk in front of Plaintiff's plot Matungulu/Kyaume/2489. The structure is a water kiosk vide photographs P. Exhibit 3a & b.

4. The Defendant was served with a demand notice dated 13.1.2012 produced as Exhibit No.4. The same letter warned the Defendant that the construction was illegal as he (Defendant) was committing the acts of trespass without any consent from the Plaintiff or the approval of the local authority.

5. The Plaintiff claims that the structure blocks the entry into his plot. He cannot send building materials to his plot. He sought the court to grant the orders sought in the Plaintiff. The Plaintiff has demonstrated his ownership to the subject herein as he is the registered owner of the plot. The Defendant has not impugned the title of the subject matter. Being registered owner, the Plaintiff is entitled to enjoy his property in terms of the provisions of Article 40 of the Constitution of Kenya and the provisions of the Lands Act of 2012.

6. There is no justification for the Defendant's structure to remain erected in breach of the Plaintiff's right to use and enjoyment of his property subject matter herein. The court therefore holds that the Plaintiff has proved his case on balance of probabilities and makes the following orders:

7. **The court grants all the prayers in the Plaintiff plus costs and interests.**

Signed and Delivered at Machakos this 28th day of November, 2014.

CHARLES KARIUKI

JUDGE