

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HCC NO. 233 OF 2012

CHAIRMAN KIAWAMURRU YOUTH POLYTECHNIC PLAINTIFF

VS

KAMAU WATHIRI & ANOTHER.....DEFENDANT

JUDGMENT

The plaintiff has sued the two defendants claiming to be a beneficial owner of all that parcel of land known as L.R. NO. MUHITO/NJIRUINI/209 the same being held in trust for their benefit by the County Council of Nyeri. The plaintiff claims further that *at all material times relevant to this suit, the Defendants were permitted by the plaintiffs to occupy the suit land as licensees. By an undertaking dated 9th October 2007 the defendants were required to vacate the suit land to facilitate, development of the plaintiff's facilities by 28th February 2008. In breach of the terms of the said license and undertaking, the defendants have failed, refused and/or ignored to vacate the suit land. Demands and notice of intention to sue have been given but the defendant's have refused.*

The plaintiff therefore prays for an order of eviction of the Defendants from L.R. NO.MUHITO/NJIRUINI/209.

The defendant was served but never entered appearance nor filed defence in the stipulated time or at all hence judgment was entered.

During formal proof the plaintiff gave evidence that the land belonged to the community where they have constructed a Youth Polytechnic. However, there are squatters living on the land and have constructed temporary shelters thereon. They have been told to leave but have refused. They were to vacate on 28/8/2008 but failed to do so. A search shows that the land was held by the **City Council Of Nyeri** as it then was. The Ministry of Education and Ministry of Health recommended that there be a registration of the Youth Polytechnic.

This court finds that the plaintiff has proved on the balance of probabilities that as at 22/9/2010, **MUHITO/NJIRUINI/209** was a freehold property measuring 2.5 acres registered in the name of the **County Council of Nyeri** but reserved for a Youth Polytechnic. The defendants **who are not members of a youth polytechnic**, are therefore illegally occupying the suit land as the same is reserved for polytechnic use or a youth club.

The upshot of the above is that an order of eviction is hereby issued against the defendants. Costs to the plaintiff.

DATED AND DELIVERED AT NYERI THIS 11TH DAY OF DECEMBER 2014

ANTONY OMBWAYO

JUDGE