

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA

ELC NO. 35 OF 2021

{Formerly at Environment and Land Court at Kisii Case No. 6 of 2016}

JOHN NYANG'AU MONYENCHE.....PLAINTIFF

=VRS=

NYAMUSI NYAMBOGA.....1ST DEFENDANT

NACKSON ONYANCHA MOMANYI.....2ND DEFENDANT

PERIS KEMUNTO MONYENYE.....3RD DEFENDANT

JUDGMENT

After this court ordered that the Defendant be evicted from the piece of land known as Land Parcel NO. WEST MUGIRANGO/1135 on 21/10/2021 parties were invited to make Submissions to pave way for the final Judgment on Damages for illegal compensation and mesne profits. A valuation Report was compiled by Milestone Land Access Limited same dated 26/10/2021 showing that the market value of lost rentals for the suit property as at the date of valuation i.e. as at 26/10/2021 was Kshs. 994,000/=. The cause of action arose from the year 2007, a period of 14 years to the date of Judgment. This is the figure the Plaintiff has asked the court to award as General Damages.

The encroached area is approximately 0.5 Acres. The affected area has tea bushes and eucalyptus trees towards the river. The land is in a prime agricultural zone and the most prevalent farming activity is tea and trees for timber. Although the Valuation Report talks of the value assessed being rental losses for the last 30 years to be paid by the encroachers and not for purchase of the parcel, I do not understand where the 30 years come from since the period of encroachment is 14 years. There is also no indication that the Plaintiff was about to put up rental houses or that he ever planned to do so.

We are also not told that it is within a township but had he planted eucalyptus trees, the same would have been mature by now and if he had planted tea bushes the same would have matured within the first 3 years and therefore the Plaintiff would have picked tea for approximately 11 years. I would therefore consider the figure of Kshs. 400,000/= to be reasonable General Damages in the circumstance. I therefore award the sum of Kshs. 400,000/= on General Damages in favour of the Plaintiff against the Defendants jointly and severally.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 22ND DAY OF APRIL, 2022.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Plaintiff: Mr. Nyagwencha

Defendants: Defendants Present. No Advocate