

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 180 OF 2016

WILLY MWOLOLO MUINDI.....PLAINTIFF

VERSUS

KASYOKA MBITHI NDUVA.....DEFENDANT

JUDGMENT

1. In the Plaintiff dated 4th November, 2016, the Plaintiff averred that he is the legal representative of the Estate of the late Muindi Kitolo Kithana (*the deceased*); that parcel of land known as Muputi/Kimutwa/226 is registered in the name of the deceased and that the Defendant trespassed on the suit land in the year 2008.
2. The Plaintiff has sought for an order of permanent injunction restraining the Defendant, his servants, or any person claiming under him from encroaching or trespassing on the suit land.
3. The Defendant entered appearance and filed a Defence on 21st December, 2016. In the Defence, the Defendant averred that since the year 2015, he has been staying on the suit land; that the suit land is his ancestral land and that he has never been violent as alleged in the Plaintiff.
4. When this matter came up for hearing on 13th June, 2019, neither the Defendant nor his representative was in court. The matter proceeded for hearing in his absence.
5. The Plaintiff, PW1, informed the court that the suit land is registered in the name of his late father who died in the year 2005; that the Defendant started trespassing on the suit land in the year 2008 and that the Defendant has been wasting the land by grazing and cutting down trees and vegetation.
6. The Plaintiff produced in evidence the official search for parcel of land known as Muputi/Kimutwa/226 measuring 10.8 Ha. The search shows that the suit land was registered in favour of the Plaintiff's father on 22nd May, 1987.
7. The Defendant did not controvert the Plaintiff's evidence that indeed, it is the Plaintiff's father who is the proprietor of the suit land. Considering that Section 27 of the Registered Land Act (*repealed*) provides that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land, I find and hold that the Plaintiff has proved his claim on a balance of probabilities. The Plaintiff's Plaintiff dated 4th November, 2016 is therefore allowed as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 5TH DAY OF JULY, 2019.

O.A. ANGOTE

JUDGE