



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MOMBASA**

**ELC NO. 426 OF 2017**

**FREDRICK JULIUS MUGAMBI.....PLAINTIFF**

**VERSUS**

**NAOMI NDITI MUTUVA.....DEFENDANT**

**JUDGMENT**

***(Plaintiff seeking orders of eviction against the defendant; plaintiff being proprietor of the suit land; no defence entered by the defendant; plaintiff's case succeeds and defendant ordered to vacate the suit land or be evicted)***

1. This suit was commenced through a plaint which was filed on 22 November 2017. The plaintiff has pleaded that he is the registered owner of the land parcel Taita Taveta/Lake Jipe Settlement Scheme/130. He has averred that sometime in the year 2016, the defendant unlawfully trespassed into the land and put up illegal structures. He has pleaded that despite verbal and written demands, the defendant has refused to vacate. In the suit, the plaintiff has sought an order of eviction, costs and interest.
2. The defendant was served with summons but did not enter appearance nor file defence. Neither did she appear during the hearing of the matter despite being served with a hearing notice.
3. The plaintiff in his evidence explained that the suit land is in a Settlement Scheme and he was allotted the land. He completed paying the requisite fees and he was eventually issued with a title deed on 15 June 2015. He produced the allotment letter, payment receipts and the title deed. He reiterated that the defendant is illegally occupying his land thus the prayer for an order of eviction.
4. The plaintiff's pleadings and evidence are not controverted. It is clear to me that it is the plaintiff who owns the suit land. As owner of the suit land, it is the plaintiff who is vested with all proprietary rights including the right of ingress and egress, and exclusive use and possession. These rights are provided for in Section 24 of the Land Registration Act, 2012 which is drawn as follows :-

*Section 24 – Interest conferred by registration*

*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) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.*

5. It will be seen from the above that it is the registered proprietor who is vested with all rights and privileges over the land in issue.
6. Given the above, I have no reason to deny the plaintiff the orders that he has sought and I now make the following orders :-
  - (i) That as between the plaintiff and the defendant, it is hereby declared that it is the plaintiff who is the proprietor of the land parcel Taita Taveta/Lake Jipe Scheme/130.
  - (ii) That the defendant is hereby ordered to give vacant possession within 14 days of being served with this judgment and/or decree and in default she be forcibly evicted.

(iii) That the plaintiff shall have the costs of this suit.

7. Judgment accordingly.

**DATED, SIGNED and DELIVERED at MOMBASA this 5<sup>th</sup> day of November 2019.**

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**MUNYAO SILA,**

**JUDGE.**

**IN THE PRESENCE OF:**

Mr. Amata for the plaintiff.

No appearance for the defendant.

Court assistant; David Koitamet