



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT BUSIA**

**ELC CASE NUMBER 21 OF 2015**

**RING OF HOPE COMMUNITY BASED ORGANIZATION....PLAINTIFF**

**-VERSUS-**

**OMONDI NALUKADA.....1<sup>ST</sup> DEFENDANT**

**OTIENO OMONDI.....2<sup>ND</sup> DEFENDANT**

**OLOO OMONDI.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff brought this suit praying for judgment against the defendants jointly and severally for;

**a. An eviction order**

**b. Costs.**

**c. Any other relief the Honourable Court deems just to grant.**

2. The Defendants never entered appearance despite being served with summons to enter appearance as per the affidavit of service of Stephen Otaget Ofula dated 5<sup>th</sup> June 2015 and filed in court on 24<sup>th</sup> June 2015 while the hearing notice was served on 6<sup>th</sup> February 2021. The matter thus proceeded for hearing undefended.

3. PW1 Benjamin Apopo who gave evidence on behalf of the plaintiff stated that he is from Funyula-Samia sub-county. He is a farmer and the chairman of the plaintiff. That the plaintiff was registered in May 2013 under the Ministry of Gender and produced the certificate of registration as PEX 1. The witness stated that the plaintiff purchased land No. SAMIA/LUANDA MUDOMA/132 from Nimrod pursuant to which they obtained a title produced as PEX 2. That the plaintiff had obtained a consent from Funyula Land Control Board now produced as PEX 3. He further stated that the defendants came onto the land in 2013 after they had purchased the land. He continued in his evidence that they had issued a demand letter before they filed this suit which letter he produced as PEX 4. The plaintiff asked the court to grant them the order of eviction and costs.

4. The suit has not been contested by the 1st defendant and therefore the Plaintiff's evidence remains uncontroverted and unchallenged. However, the court is mandated to analyse if the Plaintiff is has made out a case required standard of balance of probability. From the above, the issues for this court to determine are;

**i. Whether the plaintiff is entitled to an order of eviction against the defendants.**

**ii. Who should pay costs.**

5. On the first issue, the suit land is registered in the name of the Plaintiff as shown in the certificate of title produced PEX 2. The plaintiff has also produced a Land Control Board Consent dated 28.1.2014 as PEX 3 to show that he lawfully acquired the suit property. Pursuant to the provisions of **Sections 24 and 25 of the Land Registration Act, 2012** registration confers upon a proprietor rights and interest that can only be defeated on grounds of fraud or misrepresentation to which the person is proved to be a party or where the title has been acquired illegally, un- procedurally or through a corrupt scheme as provided in **Section 26 of the Land Registration Act, 2012**. Since the plaintiff's title has not been challenged, the court can only conclude in its favour.

6. Section 152A of the Land Act provides for rights of entry to land provides thus; **'A person shall not unlawfully occupy private, community or public land.'** The plaintiff in his statement stated that the defendants were notified at the time of purchase and asked to vacate

the suit land and but they refused to oblige, prompting them to file this suit. They also issued them with a demand notice produced as Pex 4 requiring them to surrender vacant possession but the defendants failed to comply with the terms of that letter.

7. Consequently, I do find that the plaintiff has proved their case on a balance of probability. The defendants have also made the plaintiff to incur costs of getting vacant possession to the land through the filing of this suit. Therefore, i make the following orders;

**a. I enter judgment for the Plaintiff against the Defendants in the suit for an eviction order from L.R. No. Samia/Luanda-Mudoma/132.**

**b. The eviction to be undertaken if after 90 days from date of service of this decree upon the defendants they do not surrender vacant possession. The eviction shall be carried out in accordance with Sections 152 B, 152E, 152F,152 G and152 I of the Land Act, 2016.**

**c. The costs of the suit awarded to the plaintiff.**

**DATED, SIGNED & DELIVERED AT BUSIA THIS 9<sup>TH</sup> DAY OF JUNE, 2021.**

**A. OMOLLO**

**JUDGE**