



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT BUSIA**

**ELC CASE NO. 195 OF 2017**

**GEORGE MUYODI.....PLAINTIFF**

**VERSUS**

**BENJAMIN WASWA.....DEFENDANT**

**J U D G M E N T**

1. The plaintiff filed a suit against the defendant via a plaint dated 23<sup>rd</sup> November 2017 seeking the following orders against the defendant;

**a) Eviction of the defendant, his family, servants, agents and or any other person claiming on his behalf from land parcel L.R. MARACHI/ESIKOMA/2730.**

**b) Costs of this suit.**

2. The plaintiff averred that he is the sole absolute registered owner of L.R. MARACHI/ESIKOMA/2730 measuring approximately 0.4 Ha. He stated that the defendants on learning that the plaintiff was registered as the proprietor without consent, any probable cause, unlawfully, illegally and forcefully moved into the suit land and erected a house and is in occupation and uses a portion of the land. He further stated that the Defendant's act of trespass and forceful continued occupation/use of the land denies the plaintiff quiet and peaceful possession, use and enjoyment of his land.

3. The defendant entered an appearance and filed a defence dated 20<sup>th</sup> May 2018. He averred that he purchased land comprising L.R. No. MARACHI/ESIKOMA/2004 vide the original proprietor's widow one ROSE MAKOKHA OPIYO who accepted to transmit the same after completion of the succession process. That after the sale agreement through concealment of fact, the plaintiff bought an already sold land and took advantage of the widow's ignorance and transferred the whole parcel to himself with the knowledge that the defendant was utilizing and occupying the land since 2014. He averred that the plaintiff's registration was through fraud.

4. The plaintiff filed a Reply to Defence and stated that he is a stranger to the transaction between the defendant and Rose Makokha Opiyo and that the sale agreement is a nullity and unenforceable in law. He denied participating in any act of fraud or illegality double standards bias.

5. The matter proceeded for hearing on 6/7/2021 with the plaintiff as PW1. He adopted his witness statement dated 23/11/2017 as his evidence. He stated that he works for Kenya Railways. He testified that he is the registered owner of L.R. MARACHI/ESIKOMA/2730 which he acquired for value. He produced a copy of title as PEX-1 and a copy of the search as PEX-2. He was looking for land to buy and when he got it the agreement was reduced into writing. He stated that he carried out succession proceedings which awarded him the land and he produced a copy of the grant as PEX-3. He stated that the defendant forcefully encroached/ trespassed onto the land and despite being asked on several occasions to leave the defendant has refused. He further stated that the defendant has no interest or right over his land and he is unable to use his land due to the illegal acts of the defendant. The defendant built a house on the suit land claiming that he had also purchased it. He reported to the chief and thereafter filed this case. He prayed that the defendant be evicted from his land and thereafter be restrained from interfering with his peaceful use of the land. He also prayed for costs. The plaintiff then closed his case.

6. Despite being served with a hearing notice, the defendant never appeared for the hearing and his case was marked as closed and therefore the plaintiff's evidence is uncontroverted and unchallenged. The court is mandated to analyse the evidence and material placed before it and decide if the plaintiff has made a case to the required balance of probability.

7. The issue for determination before this court is;

**i) Whether the plaintiff is entitled to an order of eviction as prayed.**

**ii) Who should pay the costs of the suit?**

8. On the first issue, the plaintiff produced a copy of the title as PEX 1 and a copy of the search dated 29/6/2017 as PEX 2 which shows that he is the registered proprietor of the suit land. According 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.

9. 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 defendant forcefully encroached onto the land and despite being asked to vacate on several occasions has refused to oblige, prompting him to file this suit.

10. Consequently, I do find that the plaintiff has proved their case on a balance of probability. The defendants have also made the plaintiff incur costs of getting vacant possession of 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 the date of service of this decree upon the defendants they do not surrender vacant possession. The eviction shall be carried out as provided under Sections 152 B, 152E, 152F, 152 G and 152 I of the Land Act, 2016.**

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

**Dated, signed and delivered at BUSIA this 28<sup>th</sup> day of October 2021.**

**A. OMOLLO**

**JUDGE**