



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 19 OF 2019**

**LEMITEI KAMAU NGANGA.....PLANTIFF**

**-VERSUS-**

**HALIMA SAID.....DEFENDANT**

**JUDGMENT**

The Plaintiff claim against the Defendant is as follows;

- a. An eviction order directed to the Defendant to vacate the Plaintiff's **LAND REFERENCE NUMBER KAJIADO/KAPUTIEI-CENTRAL/2816**.
- b. A permanent injunction restraining the Defendant or anybody claiming through him from trespassing into, cultivating, selling disposing off or in any other manner interfering with the Plaintiff's quiet possession and ownership of the suit land
- c. Mesne profits.
- d. Costs of the suit
- e. Any other relief that the Court may deem just and fair to order.

The Plaintiff's case is as follows;

He is the registered proprietor of the suit land since 30<sup>th</sup> December, 2015 when he was issued with the title deed. On an unspecified date, the Defendant encroached upon the Plaintiff's land by tilling thereon and building structures made of mud and iron sheets.

When the Plaintiff reported the matter to the chief, the Defendant was told to vacate the suit land but she failed to do so rendering this suit necessary.

The Defendant did not enter appearance or file a defence even though she was duly served with the plaint, accompanying documents and summons to enter appearance.

In support of his case, the Plaintiff filed the following;

1. A witness statement by himself
2. Copy of Title Deed for L.R. KAJIADO/KAPUTIEI-CENTRAL/2816.
3. Letter dated 20/8/2018 asking the Defendant to vacate the suit land.

By the time of writing this Judgement no written submissions have been received from the Plaintiff's counsel even though they were supposed to have been filed by 5<sup>th</sup> November, 2021.

Be that as it may, I have written the Judgment without such submissions. I find that the following issues come up for determination;

1. Who is the registered proprietor of the suit land?

2. Does the Defendant, or anybody else for that matter have a right to trespass or occupy the land without the Plaintiff's authority?

On the first issue, I find that the Plaintiff is the registered proprietor of the suit land because he has exhibited in this case a Certificate of Title. **Section 26 of the Land Registration Act** provides as follows;

**1. The Certificate of Title issued by the Registrar upon registration, or to a purchaser of land upon transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to encumbrances, easements, restrictions and conditions contained or endorsed in the Certificate, and the title of that proprietor shall not be subject to challenge, except**

**a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or**

**b. Where the Certificate of Title has been acquired illegally, unprocedurally or through a corrupt scheme”.**

Since the Plaintiff is the registered owner of the suit land, he is entitled to all the rights of a proprietor under **Section 25 of the same act**. Such rights include quiet possession.

On the second issue, I find that the Defendant has not proved that she is entitled to occupy the suit land. She was given every opportunity to appear in Court and defend herself but she chose not to.

For the above stated reasons, I enter Judgment as prayed for in the plaint.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2021**

**M.N. GICHERU**

**JUDGE**