

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 21 OF 2018

JOHN MUEMA MAKAU.....PLAINTIFF

VERSUS

JANE KYAI.....1ST DEFENDANT

GEORGE ODHIAMBO2ND DEFENDANT

JUDGMENT

1. In the Plaintiff dated 15th January, 2018 and filed on 1st February, 2018, the Plaintiff has averred that he is the rightful owner of land known as Mavoko Town Block 2/18761 (*the suit property*); that he allowed the Defendants, who are husband and wife, to cultivate a portion of the suit property on condition that they will vacate upon demand and that the Defendants have since refused to vacate the land.

2. The Plaintiff is seeking for a declaration that the suit property is rightfully owned by him and for orders of eviction to issue against the Defendants.

3. Although the Defendants were served with Summons to Enter Appearance and the Plaintiff, they neither entered appearance nor filed a Defence. The matter proceeded for hearing as undefended.

4. In his evidence, the Plaintiff, PW1, informed the court that he is the registered owner of land known as Mavoko Town Block 2/18761 and that he allowed the Defendants to cultivate the suit land and to put on it a temporary structure on condition that they will leave on demand.

5. According to PW1, when he requested the Defendants to vacate the suit property, they declined to do so. PW1 prayed for the eviction of the Defendants.

6. The Plaintiff produced in evidence the Title Deed for parcel of land known as Mavoko Town Block 2/18761 and the official search. According to the said Title Deed and the official search, the Plaintiff was registered as the proprietor of the suit property on 7th August, 2014 and was issued with a Title Deed on 7th May, 2015.

7. Section 24 of the Land Registration Act provides that 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. The Certificate of Title can only be defeated on the ground of fraud or misrepresentation or where it is acquired illegally, unprocedurally or through corrupt means.

8. Having not showed that they have superior rights over the suit land, or that the Plaintiff's Title Deed was acquired fraudulently or by misrepresentation, I find that the Plaintiff has proved his case on a balance of probabilities.

9. For those reasons, I allow the Plaintiff dated 15th January, 2018 as follows:

a. A declaration be and is hereby issued that parcel of land known as Mavoko Town Block 2/18761 is rightfully owned by the Plaintiff and a consequential order of eviction and demolition be and is hereby issued against the Defendants whether by themselves, their sons, daughters, servants or any person claiming under them from land parcel number Mavoko Town Block 2/18761.

b. Permanent injunction be and is hereby issued restraining the Defendants whether by themselves, their sons, daughters or any person claiming under them from interfering with the peaceful enjoyment, ownership and quiet possession of all that parcel of land known as Mavoko Town Block 2/18761.

c. The Defendants to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31ST DAY OF JANUARY, 2020.

O.A. ANGOTE

JUDGE