



**REPUBLIC OF KENYA**

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

**ELC NO. 281 OF 2014**

**EVALYNE MANDE OLOO**

**EDWIN ODHIAMBO SIALA.....PLAINTIFFS**

**-VERSUS-**

**THE COUNTY GOVERNMENT OF SIAYA**

**THE NATIONAL LAND COMMISSION.....RESPONDENT**

**JUDGEMENT**

*Evalyne Mandé Oloo and Edwin Odhiambo Siala hereinafter referred to as the plaintiffs sued the County Government of Siaya and the National Land Commission hereinafter referred to as defendants claiming that:*

- 1. The 1<sup>st</sup> plaintiff is the registered proprietor of all that parcel of land title No. Siaya/Township Block 1/541 a leasehold for a term of 99 years from 1<sup>st</sup> October, 1994.**
- 2. The 2<sup>nd</sup> plaintiff is the equitable owner of the said parcel of land title No. Siaya/Township Block 1/541 having purchased he same from the 1<sup>st</sup> plaintiff for a valuable consideration in the month of September, 2012.**
- 3. In or about the month of July, 2014 the plaintiffs came to learn that the 1<sup>st</sup> defendant, its servants and/or agents had unlawfully trespassed on the plaintiffs' said plot and commenced putting up structures thereon which are meant to house market stalls for allocation to eligible members of the public.**
- 4. The plaintiffs traveled to Siaya and confronted the Governor who was unable to show what rights the County Government had over the plaintiffs' said plot and a request that the said structures should be removed has been ignored as the works are in progress and are nearing completion.**
- 5. The 2<sup>nd</sup> plaintiff had prepared building plans and was at an advanced state of starting construction on the said plot and the actions of the 1<sup>st</sup> defendant are preventing him from doing so and he is thereby suffering loss and damages which he claims from the 1<sup>st</sup> defendant.**
- 6. The plaintiffs will contend that the 1<sup>st</sup> defendant's said actions have contravened the plaintiff's constitutional right to acquire and own property.**
- 7. The plaintiffs will further contend that the 1<sup>st</sup> defendant's actions are in total disregard of the sanctity and privileges of the plaintiff's title as provided for in the Land Registration Act, 2012.**
- 8. The plaintiffs' claim against the 1<sup>st</sup> defendant is for an order of permanent injunction restraining it, its servants and/or its agent from entering, remaining thereon, trespassing, building any structures thereon or in any way interfering with the quiet possession of the plaintiffs' said parcel title No. Siaya/Township Block 1/541.**
- 9. The plaintiffs further claims for an order for the eviction of the 1<sup>st</sup> defendant from the plaintiffs' said parcel title No. Siaya/Township Block 1/541.**

The 1<sup>st</sup> defendant filed a defence denying the plaintiffs' ownership of the property. The 2<sup>nd</sup> defendant herein entered appearance on the hearing date.

When the matter came up for hearing on 25<sup>th</sup> September, 2019, PW 1, Edwin Odhiambo Siala who lives in Syokimau stated that he work with Save Children International. He stated that sometimes in September, 2012, he bought a plot from one Evalyne Mande Oloo thus plot number Siaya/Township Block 1/541. They entered into agreement of sale dated 19<sup>th</sup> September, 2012. He is het to transfer the plot into his name. The County Government Siaya constructed structures on the parcel of land. They had no permission from the registered owner. He wanted the county board stopped form building on the land. Moreover, they should remove the structured form the land. He prays for costs.

The counsel for defendant closed the defence case as there was no one to call.

The plaintiff produced the lease registered on 24<sup>th</sup> February, 1999. When it was received in presentation book No. 43 of 1999, registration fees of Kshs.250 paid vide receipt number E064789.

The lease was by County council of Siaya to Evalyne Mande Oloo for a period of 99 year from 1<sup>st</sup> October, 1994. It was certified by Land Registrar, Siaya.

The certificate of lease was given on the same date, 24<sup>th</sup> February, 1999. There is evidence of constitution by the County Government of Siaya as the suit land.

Section 24 of the Land Registration Act, 2012 provided that:-

**(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.**

Section 25 provides:-

**(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and**

**(b) (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.**

Section 26 provides

(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.

The land in dispute does not belong to the county government of Siaya but to 1<sup>st</sup> plaintiff. There is no contravention that the 2<sup>nd</sup> plaintiff bought the suit land form the 1<sup>st</sup> plaintiff.

I do find that the plaintiffs have proved their case on a balance of probabilities and I do grant following prayers:

***a. An order of permanent injunction restraining the defendants and in particular the 1<sup>st</sup> defendant, its servants and/or agents, from entering, remaining thereon, trespassing, building any structures thereon or in any way interfering with the quiet possession of the plaintiffs' said parcel title No. Siaya/Township Block 1/541***

***b. An order directing the 1<sup>st</sup> defendant to remove the structures built thereon and for the eviction of the 1<sup>st</sup> defendant from the plaintiffs' said parcel title No. Siaya/Township Block 1/541.***

The court grants nominal damages for trespass of Kshs.100,000. Costs of the suit to the plaintiffs to be paid by the defendants.

Orders accordingly.

**A. O. OMBWAYO**

**ENVIRONMENT & LAND - JUDGE**

**DATED AND DELIVERED THIS 30<sup>th</sup> DAY OF January, 2020.**

**In presence of;**

**M/s Imbaya for Plaintiff**

**No appearance for Defendants**

**A. O. OMBWAYO**

**ENVIRONMENT & LAND – JUDGE**