



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC NO. 513 OF 2017**

**SIMON NGARIU MAINA & ANOTHER.....PLAINTIFFS**

**=VERSUS=**

**DANIEL MAINA GITAU.....DEFENDANT**

**JUDGEMENT**

1. The Plaintiffs filed a suit against the Defendant in which they sought the following reliefs:-

*a. A permanent injunction restraining the Defendant, his servants and/or agents from remaining thereon, putting up any structures, using or otherwise howsoever from interfering with Plaintiff's ownership, possession and/or occupation of the suit property LR No.11344/Block Z Plot No.B-540.*

*b. An order of eviction do issue forthwith against the Defendant from the suit property LR No.11344/Block Z Plot No.B-540.*

*c. General damages*

*d. Costs of the suit.*

2. The Defendant who was duly served with summons to enter appearance and file defence, entered appearance and filed a defence but at the hearing of this suit, neither the Defendant nor his advocate appeared. The hearing therefore proceeded ex-parte.

3. The Plaintiffs through the 2<sup>nd</sup> Plaintiff testified that on 12<sup>th</sup> August 2016, they saw an advertisement in the Star Newspaper which had advertised the suit property for sale by public auction. The Defendant had taken a loan from New Milimani Sacco Society Limited but failed to repay the loan. The Plaintiffs attended the public auction on 31<sup>st</sup> August 2016 where they became the highest bidders.

4. The Plaintiffs paid **Kshs.800,000/=** for the suit property. The Auctioneers gave them a certificate of sale dated 31<sup>st</sup> August 2016. They proceeded to Nairobi City County where records were changed into their names. Despite the Plaintiffs having purchased the suit property in a public auction, the Defendant has refused to vacate the suit property.

5. I have looked at the documents produced by the Plaintiffs. The Plaintiffs' evidence is not controverted. The Plaintiffs produced a press advertisement from Star Newspaper of Friday 31<sup>st</sup> August 2016. They also produced a certificate of sale dated 31<sup>st</sup> August 2016 issued by Toplink Auctioneers. Also produced is a demand letter from their lawyers addressed to the Defendant.

6. Upon purchase, the records at the Nairobi City County were changed into the Plaintiffs names. I find that the Plaintiffs have proved their case on a balance of probabilities. I allow their claim in terms of prayers **(a)**, **(b)** and **(d)** in addition to general damages of **Kshs.200,000/=**. Dated, Signed and Delivered at Nairobi on 5<sup>th</sup> this day of December 2019

**E.O .OBAGA**

**JUDGE**

In the absence of Plaintiff who were aware of the date and time of delivery of Judgement.

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**