



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**ENVIRONMENT AND LAND CASE NO. 54 OF 2012**

**FRIDA NAMAROME MUKANDA..... PLAINTIFF**

**VERSUS**

**THOMAS PEPELA MUKANDA.....DEFENDANT**

**JUDGMENT**

[1]. The plaintiff and the defendant herein are a mother and son. The plaintiff's claim is for eviction. She wants the defendant Thomas Pepela Mukanda to be evicted out of her land E. Bukusu/E. Sangalo/3440 which was registered in her name on 4<sup>th</sup> September 2012.

[2]. The defendant filed a general defence denying that he has never occupied the plaintiffs land and that he has not thrown out the plaintiff out of her land and that she stays peacefully on her land parcel without disturbance.

There is no dispute that the husband of the plaintiff and father of the defendant one Chikoyi Pepela Onula deceased, died ceased of land parcel E. Bukusu/E. Sangalo/2138. His estate was subject to Bungoma High Court Succession Cause No. 374 of 2010. The letters of administration of his estate were issued to Wycliffe Pepela Mukanda on 8<sup>th</sup> March 2012.

The court distributed his land aforesaid as follows;

- |    |                                |                   |
|----|--------------------------------|-------------------|
| 1. | <i>Vincent Juma Mukanda</i>    | <i>5 ½ acres</i>  |
| 2. | <i>Jotham Nyongesa</i>         | <i>4.85 acres</i> |
| 3. | <i>Anna Nasimiyu Iteke</i>     | <i>0.025 ha</i>   |
| 4. | <i>Shadrack Pepela Mukanda</i> | <i>4.2 acres</i>  |
| 5. | <i>Wycliffe Pepela Mukanda</i> | <i>6 acres</i>    |
| 6. | <i>Silas</i>                   | <i>5.3 acres</i>  |
| 7. | <i>Frida Namarome Mukanda</i>  | <i>1 ¾ acres</i>  |
| 8. | <i>Thomas Pepela Mukanda</i>   | <i>6 acres</i>    |

[3]. It is therefore true that the plaintiff got 1  $\frac{3}{4}$  acres, while the defendant got 6 acres. Titles were issued and the plaintiff produced in court her title for E. Bukusu/E/ Sangalo/3440.

[4]. The plaintiff gave her evidence that that defendant (her son) has left his portion and is now squatting on a portion of her land of 1  $\frac{3}{4}$  acres where he has put his second wife and therefore, denying the plaintiff the use and occupation of the land.

[5]. The plaintiff's case was supported by Wycliffe Pepela Mukanda the administrator of the estate of Chikoyi Pepela Onula who testified how he distributed the estate of the deceased and how Land Control Consents were obtained for the respective parcels and how his mother the plaintiff was given 1  $\frac{3}{4}$  acres and the defendant was given 6 acres. The witness told the court that he knows for sure that the defendant has encroached on the plaintiff's land and that he should move out and vacate out of the plaintiff's land.

[6]. The defendant on his part never disputed the evidence of the plaintiff and the support from the administrator. He only alleged that he was given one acre by his father and that he is the last born. He told the court that he has no witnesses.

[7]. The entitlement of the parties herein have been determined by the High Court succession court in Bungoma. The plaintiff has 1  $\frac{3}{4}$  acres and the defendant has six (6) acres. I was never told that there is any application for annulment of the grant pursuant to the decision of the High Court in the Succession Cause no. 374 of 2010. The parties will stay on the parcels of land each was granted.

The defendant admitted that he has encroached on the plaintiff's land where he has put his second wife. He has done so without the consent and permission of the plaintiff. He will now move and vacate out of the plaintiff's land and move to his land aforesaid. He will have 45 days to do so failing which, the plaintiff will forcefully evict him from her land with the help of the bailiff of this court and the nearest police station and Administration Police. The defendant shall also pay the costs of the suit to the plaintiff and in addition the costs of eviction if he does not move and vacate out of the suit land within the 14 days aforesaid.

IT IS SO ORDERED.

**DATED at BUNGOMA this 11<sup>th</sup> day of May 2016**

**S. MUKUNYA**

**JUDGE.**