



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 230 OF 2012

BARNABAS MUTUA MUMBU..... PLAINTIFF

VERSUS

MBALU MBITHI

MUMO MBALU..... DEFENDANTS

J U D G M E N T

1. The Plaintiff, **Barnabas Mutua Mumbu** is the registered owner of land parcel No. **Mavindini/Mavindini/1283** (hereinafter suit property). The Plaintiff's case is that he purchased the suit property from the 1st Defendant and lived there peacefully from 1985 up to the year 1994. That the 2nd Defendant who is a son to the 1st Defendant has now encroached on the suit land and put up a temporary structure there. The Plaintiff accused the Defendants of having resorted to use of force and crude weapons to keep him away from his land.
2. The Plaintiff prays for orders against the 1st and 2nd Defendant jointly and severally for:-
 1. **"A permanent injunction restraining the Defendants from entering, trespassing and or in any other manner interfering with the land parcel No. Mavindini/Mavindini/1283.**
 2. **An order of eviction against the 2nd and or 1st Defendant ordering that he vacates and delivers vacant possession of the suit property to the Plaintiff.**
 3. **Mesne profits from the year 2005 until the date of delivery of vacant possession.**
 4. **Costs and interests of this suit.**
 5. **Any other relief as the court may deem just to issue."**
3. The Defendants did not enter appearance or file any defence. Interlocutory judgment was entered on 10/8/12. Thereafter the case proceeded to formal proof.
4. The Plaintiff's evidence that he is the registered owner of the suit property is supported by documentary evidence. The Plaintiff produced the sale agreement, the Title Deed No. **Mavindini/Mavindini/1283** and a certificate of official search as exhibits. These documents show that the Plaintiff is the proprietor of the said property.
5. The Plaintiff's evidence that upon purchase of the land he took vacant possession of the suit property and started cultivating and grazing his animals there is not controverted by any other evidence. The Plaintiff's evidence that both Defendant 1 and 2 have encroached on the suit property and settled their families there also remains uncontroverted. Although the Plaintiff gave

evidence that the Defendants guard the suit property with a *panga* and have prevented him from using the said land, the Plaintiff did not quantify his loss.

6. The Plaintiff has proved his case except for the prayer for *mesne* profits. Consequently, I allow the Plaintiff's case in terms of prayer No. 1, 2, and 4.

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **11th** day of **Februay** 2015.

B. THURANIRA JADEN

JUDGE