



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**

**E.L.C CASE NO.18 OF 2014**

LUDHIAH CHEPKIRUI KIMETO.....PLAINTIFF

**VERSUS**

RAEL KURGAT KIMETO.....DEFENDANT

**J U D G M E N T**

***(Suit by plaintiff seeking to have defendant evicted from land and permanently restrained; suit property belonging to plaintiff; defendant not defending the suit; defendant not demonstrating any right over the property; judgment entered for the plaintiff).***

This suit was commenced by way of plaint filed on 14<sup>th</sup> April 2014. In the plaint, the plaintiff has averred that she is the registered proprietor of the land parcel Trans Mara/Ololmasani/1088 measuring 1.59 Hectares which land was curved out of the land parcel No. 167. It is pleaded that in the year 2012, the defendant without any colour of right, trespassed into the plaintiff's land and chased her away. She also removed the beacons and burnt the plaintiff's house and started cultivating the land. It is pleaded that the plaintiff issued an oral demand, and even used the area chief to ask the defendant to vacate, but the defendant has declined to do so. She has pleaded that there had been a Land Adjudication Case No. 97 of 1985 and an appeal to the District Commissioner, Trans Mara Appeal No. 55 of 2004, which were decided in her favour. In the suit, the plaintiff wants the following orders :-

- (a) A declaration that parcel No. Trans Mara/Ololmasani/1088 measuring 1.59 Hectares or thereabouts belongs to the plaintiff and that the defendant is a trespasser therein.*
- (b) A permanent injunction restraining the defendant and or her agents, employees, servants, from entering, remaining, ploughing, and/or interfering with the plaintiff's suit property.*
- (c) An eviction order against the defendant and/or her agents, servants.*
- (d) Costs of this suit.*
- (e) Any other relief which the Honourable Court may deem fit and just to grant.*

Despite being served with the pleadings and summons, the defendant did not enter appearance nor file any document to oppose the plaintiff's suit. Neither did the defendant attend at the hearing of the suit despite being served with a hearing notice.

The plaintiff testified and called one witness. She gave evidence that she is the owner of the land and

produced a search certificate to attest to this. She further testified that her house was destroyed and that she reported to the police. They previously had a dispute which was referred to the Land Disputes Tribunal which decided in her favour. She stated that she settled on the suit property with her husband who later died and that she has no relationship with the defendant. The defendant however owns the neighbouring land.

PW-2, William Kiplangat Matingut, testified that the defendant and her children burnt the house of the plaintiff so that the plaintiff can get out of the land. The plaintiff now lives at his home with her son.

As I stated earlier, the defendant did not participate in these proceedings. The case of the plaintiff is therefore uncontroverted. I have analysed the pleadings and the evidence. I have seen from the search certificate that the plaintiff became registered as proprietor of the suit property on 22<sup>nd</sup> June, 1994. I have also seen the report from the police that the plaintiff's house was demolished. It is not however clear who demolished the house since the defendant is not mentioned. I have also looked at the adjudication documents produced which show that there had been a dispute between the plaintiff and the defendant which was resolved in favour of the plaintiff. The final appeal was heard by the District Commissioner Trans-Mara East and a verdict passed on 10<sup>th</sup> April, 2012.

The defendant has not adduced any evidence to demonstrate that she has any right over the suit property. The plaintiff as proprietor is entitled to enjoy all rights of proprietorship, including the right of exclusive possession. These rights are contained in Section 25 of the Land Registration Act, 2012, which provides as follows :-

*Rights of a proprietor.*

*25. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—*

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

*(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.*

*(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.*

I see no reason why the plaintiff's case should not succeed with costs. I hereby enter judgment for the plaintiff and make the following orders.

*(i) As against the defendant, the plaintiff is hereby declared to be the legitimate proprietor of the land parcel Transmara/Oloimasani/1088.*

*(ii) That any possession by the defendant of the land parcel Transmara/Oloimasani/1088 is hereby declared to be illegal and an act of trespass.*

*(iii) The defendant and/or her servants/agents are hereby ordered to forthwith vacate the land parcel Transmara/Oloimasani/1088 and in any event no later than 14 days after service of this judgment and/or decree, and in default, an eviction order to issue.*

*(iv) A permanent injunction is hereby issued restraining the defendant and or her agents, employees, servants, from entering, remaining, ploughing, and/or in any way interfering with the plaintiff's possession of the land parcel Transmara/Oloimasani/1088.*

*(v) Cost of the suit will be shouldered by the defendant.*

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 2<sup>nd</sup> DAY OF OCTOBER, 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

No appearance on part of M/s Omonywa Mamwacha for Plaintiff

Defendant did not enter appearance- absent