

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 27 OF 2016

THOMAS ANZEZE MUSIRA.....PLAINTIFF

VERSUS

SAMSON JARENA.....DEFENDANT

JUDGEMENT

At all material times the plaintiff was and is the registered owner of the property known as Kakamega/Viyalo/1. The defendant without any lawful plaintiff has entered into and remained in position property known as Kakamega Viyalo/1 and has refused to vacate the said property. The plaintiff's claim against the defendant is for an eviction order to issue against the defendant evicting him from the said property. Unless evicted from the said property the defendant will continue to enjoy the use and benefit of the said property to the detriment of the plaintiff. The plaintiff prays for judgment against the defendant.

(a) An order of eviction to issue evicting the defendant from the property known as Kakamega/Viyalo/1.

(b) Costs of this suit.

This court has considered the case and the submissions herein. The defendant failed to defend the matter or file any papers. The plaintiff admits there has been a similar suit namely PALASINA SIBIRO LUBEKA VS THOMAS ANZEZE ELC case No 8 of 2015. In that case the plaintiff is well aware that land parcel Kakamega/Viyalo/1 ceased to exist and was subdivided to land registration No. NORTH MARAGOLI/VIYALO/1654 and land registration No. NORTH MARAGOLI/VIYALO/1655. Judgement was delivered in that matter way back in 27th September 2017. There is no current search certificate in this matter and the copy of the title produced is dated 1998. This matter is frivolous and an abuse of the court process. I find that the plaintiff has failed to prove his case on a balance of probabilities and I dismiss it with no orders as to costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 28TH DAY OF FEBRUARY 2019.

N.A. MATHEKA

JUDGE