



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC NO. 109 OF 2015 (OS)**

**IN THE MATTER OF ORDER 37 RULES 1, 2 AND 7 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF TRESPASS TO LAND**

**AND**

**IN THE MATTER OF NYERI/MUNICIPALITY BLOCK II/99**

ERASTUS KIAMA GICHUKI.....1<sup>ST</sup> PLAINTIFF/APPLICANT

DAVID NGUNJIRI MUREITHI.....2<sup>ND</sup> PLAINTIFF/APPLICANT (*Suing as*  
THE REGISTERED TRUSTEES OF THE UNITED MEMBERS SOCIAL CLUB)

**-VERSUS-**

JOHN MAREGWA .....1<sup>ST</sup> DEFENDANT/RESPONDENT

JAMES NDERITU MUKUNDI.....2<sup>ND</sup> DEFENDANT/RESPONDENT

STANLEY KINYUA GAKURE.....3<sup>RD</sup> DEFENDANT/RESPONDENT

STEPHEN GICHUKI GITHAIGA.....4<sup>TH</sup> DEFENDANT/RESPONDENT

PETER MWANGI MUTUYA.....5<sup>TH</sup> DEFENDANT/RESPONDENT

JOSEPH NGANGA KAMENJU.....6<sup>TH</sup> DEFENDANT/RESPONDENT

HARON MWANGI.....7<sup>TH</sup> DEFENDANT/RESPONDENT

JOHN MWANZIA.....8<sup>TH</sup> DEFENDANT/RESPONDENT

MAMA WAMUYU.....9<sup>TH</sup> DEFENDANT/RESPONDENT

NJERI .....10<sup>TH</sup> DEFENDANT/RESPONDENT

**JUDGMENT**

1. The plaintiffs herein took up the summons dated 2<sup>nd</sup> April, 2015 and amended on 3<sup>rd</sup> November, 2016 for determination of the following questions;

**i. Whether the defendants have any registrable interest in the parcel of land known as LR No. Nyeri/Municipality/Block 111/99 (the suit property)?**

**ii. Whether the defendants are trespassers in the suit property;**

**iii. Whether or not the defendants should be forcefully evicted from the suit property.**

**iv. Whether the defendants should be condemned to pay the costs of these proceedings.**

2. The suit/application is supported by the affidavit of the chairman of the plaintiff/applicant, Erastus Kiama Gichuki, where it is deposed that the deponent has the authority of the other members of the United Members Social Club (the Club) to present this suit; that the suit property belongs to the Club and that the defendants invaded the suit property sometime in 2011 and erected make shift sheds for selling second hand goods, groceries and for car-wash.

3. Lamenting that attempts to evict the defendants from the suit property have been in vain, the plaintiffs urge the court to issue eviction orders against the defendants.

4. Despite having been served with summons to enter appearance, the defendants did not file a statement of defence within the time stipulated in law and at all. As a result, on application by the plaintiffs, interlocutory judgment was entered against them on 17<sup>th</sup> July, 2015 and the matter set down for formal proof.

5. When the matter came up for formal proof, Erastus Kiama Gichuki (P.W.1) informed the court that he is one of the registered trustees of the club herein, that they (he and other officials of the Club) brought this suit in their capacity as the registered trustees of the Club. He reiterated that the defendants have trespassed into the suit property and urged the court to issue the orders sought against them.

#### **Analysis and determination**

6. Upon being served with summons to enter appearance, the defendants filed a memorandum of appearance on **27<sup>th</sup> April, 2015** but neither filed a statement of defence nor attended court when the matter was called for hearing.

7. The evidence adduced in this suit to wit Certificate of lease and an eviction notice shows that the Club was issued with a Certificate of Lease in respect of the suit property on 29<sup>th</sup> October, 2014 and that the defendants were issued with an eviction notice by the plaintiffs.

8. Based on the uncontroverted evidence of the plaintiffs to the effect that the suit property belongs to the Club; that the plaintiffs are the trustees of the club and that the defendants have unlawfully invaded the suit property and erected unlawful structures therein, I find and hold that the plaintiffs' have made up a case for the following determinations, which determinations I hereby make: -

i. That the defendants have no registrable interest in the suit property as the same belongs to the Club herein;

ii. That the defendants are trespassers in the suit property;

iii. That the defendants should be forcefully evicted from the suit property; and

iv. That the defendants should be condemned to pay the costs of these proceedings.

9. Cognizant of the fact that the defendants may require time to relocate from the suit property, I stay the execution of the order of eviction for thirty (30) days from the date of delivery of this judgment to give the defendants time to voluntarily move out of the suit property. If at the expiry of the time herein intimated the defendants shall not have voluntarily moved out of the suit property, then it shall be lawful for the plaintiffs to forcefully evict the defendants from the suit property.

10. Orders accordingly.

**Dated, signed and delivered in open court at Nyeri this 1st day April of 2019.**

**L N WAITHAKA**

**JUDGE**

Coram:

N/A for the plaintiff

Mr. Nderitu h/b for Mr. Ndichu for the defendants

Court assistant - Esther