



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 16 OF 2017**

**ABDULRASUL HASSANI SIDI.....PLAINTIFF**

**VERSUS**

**MARY GATIMU MURIUKI.....DEFENDANT**

**JUDGMENT**

1. In the Plaintiff dated 25<sup>th</sup> January, 2017, the Plaintiff averred that he is the registered proprietor of land known as Machakos/Matuu/3374 (*the suit land*); that the Defendant is registered as the proprietor of land known as Machakos/Matuu/Plot 50 and that the two parcels of land are separated by a public road.

2. It is the Plaintiff's case that in total disregard of his rights, the Defendant has constructed a permanent structure on and through the public road and has also encroached on his land; that the encroachment by the Defendant on his land covers a portion measuring approximately 0.012 Ha and that the said encroachment has blocked him from accessing his land.

3. The Plaintiff has sought in the Plaintiff for an order of permanent injunction restraining the Defendant from encroaching on parcel of land known as Machakos/Matuu/3374 and the public road and for an order of eviction against the Defendant to issue.

4. Although the Defendant was served with the Summons to Enter Appearance and the Plaintiff, he neither entered appearance nor filed a Defence. The matter proceeded for hearing on 27<sup>th</sup> February, 2019 in his absence.

5. The Plaintiff, PW1, informed the court that he is the registered proprietor of land known as Machakos/Matuu/3374; that on the other hand, the Defendant is the owner of land known as Machakos/Matuu/Plot 50 and that the two parcels of land are separated by a road of access.

6. It was the evidence of PW1 that when the Defendant encroached on his land and the public road, he lodged a complaint with the then Matuu County Council; that the Defendant has refused to vacate the portion of the suit land that he has encroached on and that the orders of eviction should issue.

7. In support of his case, the Plaintiff produced in evidence the Title Deed for Machakos/Matuu/3374. The said Title Deed was issued in favour of the Plaintiff on 6<sup>th</sup> October, 2004. The Plaintiff also produced in evidence the report of the Machakos District Surveyor dated 26<sup>th</sup> March, 2012. In the said report, the Surveyor stated as follows:

***“This is to inform you that a Surveyor from this office visited the above parcel of land (Machakos/Matuu/3374) and after taking measurements to ascertain the encroachment of the plot on the road reserve [sic]. The encroachment measures 7m by 18m an area of 0.0126 Ha. Please note that the portion remaining is the one to be utilized in case of any construction.”***

8. In his letter dated 26<sup>th</sup> June, 2013, the Works Officer of the then Town Council of Matuu wrote to the Defendant as follows:

***“The council used official map (Matuu Registration Section Sheet No. 20A) and confirmed and marked the area you have encroached his plot as 7mx 18m. All parties agreed in PRINCIPLE that you have encroached. You agreed to remove your development which you have not done and the complainant is concerned about his full access to his plot. As such the council gives you the option to do the necessary in twenty one (21) days failure of which legal action will be taken against you.”***

9. It will appear that the notice from the then Town Council of Masaku did not move the Defendant. Indeed, todate, the Defendant has neither responded to the said letter nor offered any evidence to the contrary.

10. The uncontroverted evidence before the court shows that the Defendant has encroached on the Plaintiff's parcel of land by 7m by 18m, which is an area measuring 0.0126 Ha. That is the area that the Defendant should vacate. Consequently, the court finds that the Plaintiff has proved his case on a balance of probabilities. The Plaintiff's Plaint is therefore allowed in the following terms:

*a. An order of permanent injunction restraining the Defendant from taking possession, occupying, encroaching, developing and/or dealing with land parcel No. Machakos/Matuu/3374 together with public road running between land parcel Machakos/Matuu/3374 and Machakos/Matuu/Plot 50 in any manner whatsoever as to block the public road and infringe the Plaintiff's rights.*

*b. An order is hereby issued directing the Defendant to open up the public road and to demolish structures erected thereon. In default of so doing the Plaintiff be at liberty to demolish such structures lying on the public road running between land parcel Machakos/Matuu/3374 and Machakos/Matuu/Plot 50 at the expense of the Defendant.*

*c. An order of eviction do issue against the Defendant from occupying Plaintiff's property being land parcel No. Machakos/Matuu/3374 and further the Defendant does demolish structures erected on the Plaintiff's said property.*

*d. The Defendant to pay the costs of the suit.*

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31<sup>ST</sup> DAY OF MAY, 2019.**

**O.A. ANGOTE**

**JUDGE**