

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 162 OF 2017

CHARLES NZIOKI NZUKI.....PLAINTIFF

VERSUS

MBITHI MULI KALAI.....DEFENDANT

JUDGMENT

1. In the Plaintiff dated 27th March, 2017, the Plaintiff averred that he is the owner of land known as Plot No. 215 measuring 2 acres within Konza Ranching & Farming Co-operative Society Limited, Kwa Katheke Area of Konza Division; that the Defendant has trespassed on the suit land and that an order of eviction should issue.

2. Although the Defendant was served with Summons to Enter Appearance, he neither entered appearance nor filed a Defence. The matter proceeded for hearing as undefended. The Plaintiff, PW1, informed the court that he purchased the suit land in June, 2015 from one Michael Muli Mulwa for Kshs. 1,300,000; that the suit land is part of land at Konza and owned by Konza Ranching & Farming Co-operative Society Limited (*the Society*) and that in addition to paying the purchase price to Mr. Muli, he paid to the Society the transfer fee.

3. It was the evidence of PW1 that although the land was vacant when he purchased it, the Defendant later on moved on the land and has been occupying and using it.

4. The Plaintiff produced in evidence the Sale Agreement of 4th June, 2015; the Application for Transfer of the suit land; the receipts evidencing payment of the Transfer fees to the Society and the letter dated 25th June, 2015 from the Society.

5. In his submissions, the Plaintiff's advocate submitted that the Plaintiff has proved that he purchased the suit land for value; that the suit land was vacant at the time of purchase and that the Defendant trespassed on the land in the year 2007. Counsel submitted that the Plaintiff's suit should be allowed.

6. The Sale Agreement dated 4th June, 2015 shows that the Plaintiff purchased land known as Plot No. 215 comprised at Konza Ranching & Farming Co-operative Society Limited- Kwa-Katheke, measuring 2 acres (*the suit land*). The Agreement shows the seller of the land as Michael Muli Mulwa.

7. The Plaintiff also produced in evidence the transfer form that was issued by the Society showing the Transfer of the suit land from Mr. Muli to the Plaintiff. The Plaintiff also produced two receipts that were issued by the Society for Kshs. 300 and 30,000. The two payments were for the Application form and for the Transfer fee respectively.

8. The Defendant has not controverted the assertion of the Plaintiff that he purchased the suit land. Indeed, there is no evidence before the court to show the registrable interest of the Defendant in the suit land. In the circumstances, I find that the Plaintiff has proved his case on a balance of probability.

9. For those reasons, I allow the Plaintiff's Plaintiff dated 27th March, 2017 in the following terms:

a. An order of vacant possession be and is hereby issued against the Defendant in respect of Plot No. 215 Kwa Katheke Ranch, Konza Division, Machakos.

b. The Defendant to vacate and or be evicted from Plot No. 215 Kwa Katheke Ranch, Konza Division within sixty (60) days of the date of this Judgement.

c. The Defendant to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 21ST DAY OF JUNE, 2019.

O.A. ANGOTE

JUDGE